Supreme Court, U.S.

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UNITED STATES SUPREME COURT

LOUIS F. GAINES,
Plaintiff-Petitioner

v.

WHITE RIVER ENVIRONMENTAL PARTNERSHIP,
Et. Al., Defendants-Respondents

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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Indianapolis, IN 46220-3141
317--283-4821

118 pp

QUESTIONS FOR REVIEW

1. The case of Hetreed v. Allstate Inc. Co., 135 F.3d 1155, 1158; (7th. Cir. 1998), reveals a "Tradition" of denying injunctive relief to Citizens of a "Protected Class," Blacks and other Minorities - if they are the parties to suits involving unlawful discrimination in employment. Should the foregoing "Tradition," by the Seventh Court of Appeals, be abolished by the Supreme Court, because relief is denied on the basis of "Race" and/or "Sex," and because it runs contrary to the Federal Rules of Civil Procedure, Rule 65; Title 42, U.S.C., Section 1981; the United States Constitution, Fifth Amendment; and, because it contradicts the intent of Congress, and the Supreme Court's decision in Sampson v. Murray, 39 L Ed 2d 166, 170; 1974?

2. If the above "Tradition" as cited in Paragraph One; has caused, or can cause, the Seventh Court of Appeals to wrongfully use "Race" and/or "Sex," for example, to decide other cases involving unlawful discrimination in employment, and not involving injunctive relief - then should the United States Supreme Court abolish the above "Tradition" for this reason?

3. Prior to June 2, 1999, the lower courts denied the Petitioner injunctive relief on the claim that the Petitioner failed to provide medical proof of injury. On June 2, 1999, however, the Petitioner was made to suffer an on-the-

job, "Irreparable Injury." Even though medical evidence was timely provided to the District Court - all relief was then denied on the basis of the above "Tradition," as stated in Paragraph One. Did the lower courts grant the Respondents' Summary Judgment Motion in error?

4. While being engaged in "Discovery," the Respondents forced, for the first time, the Petitioner to work in their most dangerous, most infection, and most polluted work area: Solids Handling. Forcing the Petitioner to work this duty on June 2, 1999, the Respondents also withheld the minimum protective wear for such harmful process gases as Ammonia and Hydrogen Sulfide. The Petitioner was consequently overexposed; was made less alert; walked into a pipe at a moderate speed; struck his head, and suffered some permanent hearing loss, a sprang neck, and an irritated throat. Furthermore the Petitioner, a Management or Professional worker, was required to perform Union duty at the lowest skill level. In light of the above - did the lower courts affirm the Respondents' Summary Judgment Motion in error?

5. In its "Order" for May 17, 2K01, the Seventh Court denied the Petitioner's Petition for a Rehearing, and it fined him $1,000.00, on the claim that he filed a "... frivolous appeal." If the Supreme Court disagrees with the above determination, then what relief is the Petitioner due?

6. In its "Order" for March 23, 2K01, the Seventh Court affirmed the Summary

Judgment Motion for the Respondents, the moving party, on the claim that the Petitioner failed to establish a prima facie case of discrimination. Cost was also awarded in the amount to $2,388.17. Did the lower courts grant the Summary Judgment Motion in error?

7. With regard to complaints of unlawful Age, Race, and Sex discrimination; and, Retaliation - if the lower courts excluded, or ignored, any charge in error; then what relief is the Petitioner due?

8. If one or more of the following motions were denied in error, then was the Respondents' Summary Judgment Motion granted in error?: (1) Petitioner's Default Motion, (2) Motions for Injunctive Relief, (3) Recusal, (4) Discovery, (5) Motion Against Fraud, (6) Motions to Amend, (7) Motions on Perjury, (8) Motions to Compel, and Sanction, and (9) Motions to the Seventh Court.

9. If treatment of the Operation Specialists were adverse, when compared to other Management or Professional groups, and if such adverse treatment were also unlawful - then can all relief be denied to the Petitioner, for example, on the claim that all Operation Specialists were and are treated the same, almost the same, or somewhat the same?

10. If the Respondents have engaged in "Fraud" or "Perjury; or, have made evasive, false, or misleading statements to the Petitioner, and/or the Court - then what relief is the Petitioner due?

LIST OF PARTIES

1. LOUIS F. GAINES, Petitioner
   5337 North College Avenue
   Indianapolis, IN 4220-3141

2. WHITE RIVER ENVIRONMENTAL
   PARTNERSHIP, Et Al., Respondents
   2700 South Belmont Avenue
   Indianapolis, IN 46221

3. IWC RESOURCES CORPORATION,
   Managing Partner
   1220 Waterway Boulevard
   Indianapolis, IN 46406

4. Suez
   C/O UNITED WATER SERVICES, Inc.
   200 Old Hook Road
   Harrington Park, NJ 07640

5. UNITED WATER SERVICES, Inc.
   200 Old Hook Road
   Harrington Park, NJ 07640

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CITATION OF OFFICIAL & UNOFFICIAL REPORTS

1. Louis F. Gaines v. White River Environmental Partnership, Et. Al., 99-1721; Supreme Court: 530 U.S. 1230; 120 S. Ct. 2661; 147 L. Ed. 2d 275, June 12 2K.

2. Louis F. Gaines v. White River Environmental, Et. Al., In The Matter Of Louis F. Gaines; 99-1422, 99-2111; 99-3899 & 99-4048; Seventh Court of Appeals: 202 F.3d 273, January 3, 2K.

3. Louis F. Gaines v. White River Environmental Partnership, Et. Al., 00-3802; Seventh Court of Appeals: 248 F.3d 1157, March 23, 2K01.

4. Louis F. Gaines v. White River Environmental Partnership, Et. Al., 00-3802; 2001 U.S. App. Lexis 10564, May 17, 2K01.

JURISDICTION OF THE SUPREME COURT

1. On March 23, 2K01, the Seventh Court of Appeals affirmed the District Court's summary judgment for the Respondents, the moving party.

2. On May 17, 2K01, the Seventh Court denied the Petitioner's Petition for a Rehearing.

3. This matter comes to the United States Supreme Court on the authority of Title 28, U.S.C., Section 1254.

UNITED STATES CONSTITUTION AND OTHER AUTHORITY OR LAW

1. United States Constitution: Article VI, (2); the Fifth, Eighth, & Thirteenth Amendments.

2. Title 28, U.S.C., Sections: 134(a), 144, 453, 455(a), and 455(b).

3. Title 29, U.S.C., Sections: 623(a), 623(c)(3), and 623(d).

4. Title 42, U.S.C., Sections: 1981, 1983, 2000e-2(a), 2000e-2(k), 2000e-2(m), and 2000e-3(a).

5. Federal Rules of Civil Procedure, Rules: 1, 9, 15, 26, 33, 34, 36, 37, 52, 54, 55, 56, 60, 65 and 83.

6. Federal Rules of Evidence, Rules: 106, 406, and 1101.

7. Rules of the Supreme Court, Rules: 8 and 10.

8. Rules of Appellate Procedure, Rules: 10, 21, 27, 38, 40, and 46.

9. S.D. Ind., Local Rules: 6.1, 15.1, 26.2, and 56.1

STATEMENT OF THE CASE

Respondents' Hostile Working Environment

1. Effective January 30, 1994, the city

of Indianapolis, IN., awarded the Respondents the contract to manage its two Advanced Wastewater Treatment Plants: Belmont and Southport.

2. Also on January 30, 1994, the Respondents did the following:

a. Hired the Petitioner as an Operation Specialist, a management or professional position, which is paid straight time for all hours over a 40-hour week. Operation Specialists normally work within the Computer Console Room, where an industrial computer is used to help control and/or monitor either Belmont or Southport. In the presence of the Shift Supervisor, the Operation Specialist has authority over Union personnel. In the absence of the Shift Supervisor, the Operation Specialist has authority over the shift. At that time, however, the Petitioner was 49 years old, and Black. See "COMPLAINT," Page Three.

b. Hired about 14 other Operation Specialists, and at least 90% were between the ages of 40 and 70 years old. Among other management or professional groups within Operations, where the Petitioner has always been assigned, the Operation Specialists reflected the highest concentration of ethnic minorities.

c. Hired at least three Black Shift Supervisors. By January, 1997, each would be either demoted, fired, or encouraged to resign.

3. By November 1, 1994, the Respondents,

unlike the city of Indianapolis, deleted the Birthday of Dr. Martin Luther King, Jr. from the list of celebrated holidays. Ibid., P-4.

4. Since November 1, 1994, the Respondents' policy on "Equal Employment Opportunity" reads the following, as found on Page GP-14 of the Employee Handbook:

> ...
> If you are dissatisfied with the handling or result of the investigation of a complaint of alleged harassment, you should bring the matter to the attention of the Managing Partner.

5. From the time of November 1, 1994, to March 6, 1998, the Petitioner believed the above statement, or relied on it to avoid going to EEOC, for example.

6. After rejecting the Respondents' offer of early retirement in December, 1994, the Petitioner was subjected to various forms of Age, Race and Sex discrimination, and Retaliation. The Petitioner, at first, attempted to defend himself by using the internal complaint procedure, but the Respondent would never find a policy violation. On March 6, 1998, however, the Petitioner finally realized that he could not defend himself within the Respondents' "Hostile Working Environment," so an attempt was made to appeal to the "Managing Partner," and the Respondents' Project Director prevented the Petitioner from doing so. See above!

7. Being denied the right to appeal to

"Managing Partner," four complaints were then filed with EEOC, between the period of April 21, 1998, and December 18, 1998. Ibid., P-26-37.

8. Having prevented the Petitioner from appealing to the "Managing Partner" in March, 1998, the Respondents' Project Director used E-Mail to notify the work force of their ability to put pressure on "Public Officials," to obtain a favorable consideration. This event took place on November 12, 1998.

9. Between the period of April 22, 1998, and December 18, 1998, the Petitioner made a sincere effort to find an attorney, but could not acquire one in terms that he could afford. So, rather than remain silent about the Respondents' willful violations of his civil rights, the Petitioner decided to attempt to represent himself.

The District Court

1. This case came to the United States District Court of Southern Indiana, at Indianapolis, on December 18, 1998; and, on the authority of Title 28, U.S.C., Sections 1331 and 1343(a); Title 29, U.S.C., Sections 626(c) and 626(e); Title 42, U.S.C., Sections 1391(b), 1981, 1981a., 1983, and 2000e-5 - the Respondents were charged with unlawful "Age, Race & Sex" discrimination in employment, to include "Retaliation." Ibid., P-3. Also see Docket Sheet, Item #1.

2. The Petitioner sought, at that time,

a sum of $1,200,000.00 in damages.

3. On September 29, 2K, the District Court granted the Respondents' Summary Judgment Motion with cost, which amounts to $2,388.17.

Seventh Court of Appeals:

1. One, on October 25, 2K, the Petitioner's "Notice of Appeal" was timely filed, and this case came to the Seventh Court on the authority of Title 28, U.-S.C., Section 1291. Two, on March 23, 2K01, the Seventh Court affirmed the District Court's Summary Judgment for the Respondents, the moving party. On May 17, 2K01, the Seventh Court denied the Petitioner's Request for a Rehearing and fined him $1,000.00 for "... filing a frivolous appeal." The Petitioner timely paid the foregoing fine by May 30, 2K01, as directed.

United States Supreme Court:

This action follows, with the presentation of "Material Facts To Consider," and in this order:

a. District Court's Procedure.

b. Respondents' Hostile Work Force.

c. The Seventh Court of Appeals.

Material Facts To Consider

1. Petitioner's Default Motion: One, on December 24, 1998, the Respondents filed a "Notice" for a time enlargement. Two, the Petitioner opposed on December 28, 1998. Three, instead of now filing the required "Motion" for a time enlargement, the Respondents took no further action. Four, on January 8, 1999, Judge McKinney denied the Petitioner's motion by writing in part the following:

> 1. The plaintiff's objection to the defendants' seeking an extension of time is construed as his request to have provision of Local Rule 6.1 declared inapplicable in this case. Because the court finds no basis on which to do so, the plaintiff's request to to reconsider is denied.

Five, on January 20, the Petitioner filed a Motion for Default Judgment, and a Motion for Judgment on Pleadings. Six, on January 22, 1999, Judge McKinney denied the above motions. See DOCKET SHEET, #6, 7, 12, 14, 15, & 20.

2. Petitioner Seeks Injunctive Relief: One, on January 5, 1999, the Respondents used E-Mail to announce their plans to force, for the first time, the Petitioner and the remaining nine Operation Specialists to work a minimum of 28 days in Solids Handling, their most dangerous, most infectious, and most polluted work area. The effective date was February 1, 1999. Two, the Operation Specialists would now be required to perform Union duties at lowest skill level. Three, the

Petitioner opposed this mandatory assignment to Solids Handling, by seeking injunctive relief, beginning February 4, 1999. Four, the District Court and the Seventh Court found ways to deny all relief. For example, prior to being injured, the above Courts required the Petitioner to provide medical proof of an injury, as a condition for obtaining injunctive relief. Ibid., #28, 34, 41, 54, 57, 58, & 78, for example. Also see the Seventh Court's "Order" for January 3, 2K, Pages 3-4.

3. Petitioner Claims Wrongful Bias: One, given the circumstances on Page 7, Paragraph 1., the Petitioner's Motion in Support of Affidavit of Bias or Prejudice Judge was timely filed on January 20, 1999. Two, on January 22, 1999, Judge McKinney denied the motion. Ibid., #16, 19 & 20.

4. Wrongfully Bias Discovery Procedure: One, Judge McKinney required the Petitioner to deliver discovery records to Respondents by April 9, 1999, but the Respondents were not, at the same time, required to release any discovery records to the Petitioner. Ibid., #72. This wrongfully bias discovery procedure against the Petitioner would get worse.

5. Petitioner's Motion Against Fraud: One, on April 26, 1999, Petitioner's motion to prevent the Respondents from producing falsified or fraudulent discovery records was filed. Two, on April 28, 1999, Judge McKinney denied the motion. Ibid., #79 & 82.

6. Motions To Amend Complaint Denied: One, Petitioner's motions to amend his "Complaint' are denied. Ibid., #84, 120, 127, 132, 137, 162, & 165. Two, Judge McKinney would not allow the Petitioner to amend his "Complaint" under any circumstances, which included: discovery, irreparable injury, and/or retaliation.

7. Petitioner's Motion On Perjury: One, the Petitioner's motion for District Court to acknowledge Respondent's perjury was filed on May 6, 1999. Two, it was denied on May 7, 1999. Ibid., #93 & 97.

8. Judge McKinney Denies Own Entry: One, Judge McKinney wrote an "Entry" on April 28, 1999. Two, in his "Entry" for May 7, 1999, Judge McKinney denies the existence of his "Entry" of April 28, 1999. #97 & 82.

9. Ordered Discovery Conference: One, by May 26, 1999, the Respondents still refused to release any discovery documents for the Petitioner to inspect and copy. Two, a discovery conference is ordered for June 14, 1999. Three, on the day of conference, the Respondents still refused to bring any records for the Petitioner to inspect and copy. Four, recall that Judge McKinney required the Petitioner to personally deliver the requested discovery documents to the Respondents by April 9, 1999, which was timely done. Ibid., 72 & 114.

10. Petitioner's "Irreparable Injury:" One, at a time when the Petitioner was engaged in "Discovery," and "Protected Activity;" the Respondents, on June 2, 1999, forced the assignment of the

Petitioner to Solids Handling, their most dangerous, most infectious, and most polluted work area. Two, the Respondents also withheld, from the Petitioner, the minimum protective wear for harmful process gases: Ammonia and Hydrogen Sulfide. Three, the Petitioner was consequently overexposed to the foregoing gases; was made less alert; walked into a pipe while moving at a moderate rate; struck his head, and suffered a partial hearing loss, a sprang neck, and an irritated throat. Four, in his "Entry" for April 26, 1999, Judge McKinney denied the Petitioner injunctive relief on the claim that the Petitioner failed to provide evidence or proof of injury. Also see "Entry" for March 11, 1999, and April 19, 1999. Five, in his "Entry" for April 3, 2K, Judge McKinney wrote the following:

> 4. The plaintiff's motion to supplement medical records for third preliminary injunction filed on October 29, 1999, is granted, although neither this supplement nor the other materials presented by the plaintiff demonstrate that a preliminary injunction could properly be entered in this action.
>
> 5. The plaintiff's motion for a preliminary injunction, filed on June 7, 1999, is denied for the reasons previously stated in conjunction with the court's determination that the plaintiff was not entitled to injunctive relief at this stage in the case and for the further reasons

supplied by the Court of Appeals in Gaines v. White River Environmental Partnership, 2000 WL 6199 (7th Cir. January 3, 2000) (unpublished).

11. Petitioner's Motions To Compel: Since the Respondents failed to bring any discovery records to the conference on June 14, 1999, the Petitioner then filed motions to compel. Ibid., #133, 140-143, for example. The Petitioner also sought sanctions. Ibid., #139; & 140-151.

12. Respondents'Summary Judgment Motion: Having prevented the Petitioner from engaging in meaningful discovery, and after a repeated number of motions for a time enlargement - the Respondents filed their Summary Judgment Motion on July 9, 1999, which was a day late. Ibid., 126, 146, 150, 152 & 153.

13. Petitioner Questions Judge McKinney: Given the Respondents'admitted ability to put "Pressure" on public officials to get favorable considerations, and given the fact that Judge McKinney is a "Public Official," who has consistently ruled in favor of the Respondents - the Petitioner filed a motion to question Judge McKinney on August 23, 1999. Ibid., 160. See Page Five, Paragraph 8.

14. Petitioner Reviews Oral Deposition: About a month before the Respondents filed their Summary Judgment on July 9, 1999, the Petitioner reviewed the oral deposition that the Respondents took on him, in April and May, 1999. Corrections were made, and the different volumes were signed as proof of his timely review.

15. Attorney McLaughlin's Misconduct: One, on or about April 13, 1999, Attorney McLaughlin began taking the oral deposition on the Petitioner. Two, the deposition was taken in ways that denied the Petitioner all privacy. Three, on April 19, 1999, the Petitioner filed a motion to terminate it; however, Judge McKinney denied the motion. Four, on April 29, 1999, Attorney McLaughlin finally entered his appearance for the Respondents. Five, on July 9, 1999, Attorney McLaughlin helped filed the Respondents' Summary Judgment Motion, which contains a relatively large number of excerpt pages from the Petitioner's deposition. Six, the determination of which pages would be included or excluded in their Summary Judgment Motion was entirely decided by Attorney McLaughlin, or the Respondents. Seven, instead of using the corrected and signed pages that the Petitioner had timely completed - Attorney McLaughlin, or someone acting in his behalf, filed the uncorrected and unsigned pages with the Responents' Summary Judgment Motion. Eight, as one possibility for relief, the Petitioner asked, on May 19 2K, the District Court to force Attorney McLaughlin to file a complete copy of the Petitioner's depositon with the Court. Nine, Judge McKinney denied the matter on September 29, 2K, along with all other relief. Ten, after Judge McKinney granted the Respondents' Summary Judgment Motion on September 29, 2K with cost, Attorney McLaughlin then filed a "Bill of Cost" on October 13, 2K, for a sum $2,388.17. Eleven, on October 25, 2K, however, the Petitioner's "Notice of Appeal" was filed, with a motion to deny Attorney

McLaughlin's "Bill of Cost." Twelve, Judge McKinney also denied this motion on October 27, 2K. Ibid., #75, 77, 83, 153, 195, 220, 221, 224 & 229. Also see APPELLANT's REPLY BRIEF, 00-3802, Pages 9-10.

16. Attorney Coleman's Misconduct: One, on the one hand, Judge McKinney required the Petitioner to release the requested discovery records to the Respondents by April 9, 1999. On the other hand, and by June 14, 1999, Attorney Coleman had not released any discovery records for the Petitioner to inspect and copy. Two, in a discovery meeting on June 14, 1999, before Magistrate Judge Shields, Attorney Coleman was directed by Judge Shields to answer, for example, the PETITIONER's "Interrogatory #19," and arrangements were made for Attorney Coleman to release various discovery records to the Petitioner by July 1, 1999, so he too could engage in meaningful discovery. Three, Attorney Coleman continued to deny the Petitioner's right to engage in meaningful discovery. For example: In the DEFENDANTS' "Answer To All Interrogatories To Defendants," June 18, 1999, Page Two, Paragraph 5., Attorney Coleman refused to release discovery records on "Sex" discrimination on the claim that the Petitioner only claimed "Age" and "Race" discrimination. Four, in regards to Paragraph 5. above, the Petitioner's COMPLAINT, Page 30., shows that a "Race, Sex, and Retaliation" charge was filed on October 6, 1998, with EEOC. On October 20, 1998, the "Right to Suit" was issued, as shown by Page 35. Five, on or about June 29, 1999, a meeting was held between Attorney Coleman

and the Petitioner; and, the Petitioner discovered the following: (1), most of the records that were present were copies of records that the Petitioner provided on April 9, 1999; (2), other documents were obviously missing; (3), Attorney Coleman claimed that all the present records represent those that the Re-pondents gave her; (4), any record that would contradict one of the Respond-ents' affidavits, for example, was with-held; (5), other meaningful records were also withheld from the Petitioner's view, which included records from the Petitioner's personnel file. Six, this is how Attorney Coleman and the Respondents answered or responded to PETITIONER's "Interrogatory #19:" The Respondents' "Answer" was placed into a separate folder, and left unsigned! Seven, the evidence shows that Attorney Coleman and the Respondents also made an evasive, false, or misleading statement to the Petitioner, with regards to the RESPONDENTS' "Answer To Plaintiff's Interrogatories To Defendants." Page 13, April 27, 1999. The "Answer" to "Interrogatory #24 is just plain false. See PLAINTIFF's AFFIDAVIT IN SUPPORT OF 'Plaintiff's Answer Brief, June 15, 1999; "Plaintiff's Exhibit #60" contradicts the statement that the Respondents made, as reflected by "Plaintiff's Exhibit #62." Eight, meaningful discovery on mandatory assignment to Solids Handling was denied. Ibid., #41, for "Interrogatory #19." Also see APPELLANT's PETITION FOR A RE-HEARING, 00-3802, Pages 4-10.

17. Plaintiff's Reply: On June 15, 2K, the PLAINTIFF's AFFIDAVIT IN SUPPORT OF "Plaintiff's Answer Brief," was filed,

which contains a two-volume appendix: One, the "Affidavit" contains 67 pages. Two, the Appendix, Volume I, holds "Plantiff's Exhibits" #2 through 96. Three, the Appendix, Volume II, holds "Plaintiff's Exhibits" #97 through 259.

18. Petitions For A Writ Of Mandamus: One, on or about November 10, 1999, a Petition for a Writ of Mandamus was filed with the Seventh Court, #99-3899. Two, on or about November 30, 1999, another one was filed, #99-4048. Three, on the authority of the Federal Rules of Appellate Procedure, Rule 21, a copy of each was provided to the District Court. Four, Petition #99-3899 sought a review of Judge McKinney's "Rulings," and he allowed a copy to be filed with the District Court. Five, Petition #99-4048 sought to force Judge McKinney's removal from this case, and he would not allow this copy to be filed! This document also contains damaging evidence about the Respondents. See Docket Sheet, #169, 170, & 173.

19. Respondents' Hostile Work Force:

a. After the Petitioner rejected the Respondents' offer of early retirement in December, 1994, he was subjected to various forms of adverse treatment, as the following will show:

b. At all times prior to March 6, 1998, the Respondents made the Petitioner believe that he, and others, could appeal the results of a harassment complaint to the "Managing Partner." In an appeal meeting on March 6, 1998, the Respondents' Project Director prevented the

Petitioner from appealing to the "Managing Partner," which represents a direct policy violation. Furthermore, the Project Director harassed or mocked the Petitioner at this very meeting. See the Appellant's Reply Brief, Pages 26-8, which represent "Excerpt Pages 353-4" of the Petitioner's Deposition. For policy see PLAINTIFF's AFFIDAVIT IN SUPPORT OF "Plaintiff's Answer Brief," June 15, 2K; Appendix, Volume I, the second page of "Plaintiff's Exhibit 8."

c. Starting in June, 1995, Respondents continued to allow a "White" employee, Mr. Rakaska, to verbally attack the Petitioner, and would always failed to find a policy violation. Ibid., Exhibits #67, 69, 79, 84, 90, & 91.

d. Since November, 1995, using E-Mail to transmit a "Chain Letter" represents a clear policy violation. Ibid., #19.

(1). In July, 1997, the Respondents gave the Petitioner a letter of reprimand on the claim that he violated an E-Mail policy. The Petitioner is "Black." In 1996, the Respondents attempted to force all Operation Specialists into a local Union; the Petitioner opposed. In July, 1997, however, Respondents used E-Mail to announce that all 14 Operation Specialists would have to rebid for their jobs, because four positions in Solids Handling would be Unionized. In an attempt to help arrange for an efficient and safe interview schedule, which the Respondents had previously failed to do, the Petitioner used E-Mail to send a proposed schedule

to more than five employees, and was given a letter of reprimand, dated July 11, 1997. Ibid., #116 & 117. The "Five Letter" restriction has been applied only to the Petitioner, and has remained in effect since July, 1997, to the Present!

(2). In June, 1998, a group of "White employees," at least one being an Operation Specialist, used E-Mail to send a personal chain letter. No one received a letter of reprimand: only a reminder was given, instead! Ibid., Appendix, Volume II., Exhibits #19 & 192.

e. In July, 1997, the Petitioner had to compete with other Operation Specialists for continued employment, and Respondents used E-Mail to circulate distorted or false information about him, and the Petitioner opposed Ibid., #103, 102, & 105-109.

f. Afer the Petitioner presented a "Money Saving Opportunity," in June, 1997, the Respondents worked him without pay. He did not volunteer for such work, but Petitioner did it at the Respondents' request. Also, Respondents' Operational Management communicated with others about a trip to Cleveland, OH., to help test a new data base - but would not communicate with the Petitioner in any mode. Ibid., #133, 135, 136, 137 & 104.

g. In May, 1997, the Respondents Project Manager encouraged the work force to aim for input into shift schedules. In August, 1997, a work agreement was formed among a Shift Supervisor, another Operation Specialist, and the Petitioner. When this "White" Operation

Specialist failed to honor the work agreement, the Petitioner protested, and the Respondents subjected Petitioner to reassignment, a negative annual evaluation, and threats. Ibid., #140, 141, 142, 145, 146, 147, 148-56.

h. After the Respondents prevented the Petitioner from appealing to the "Managing Partner," on March 6, 1998, they began to work him without lunch, and falsified their "Complaint" Policy against him, to make it more difficult for Petitioner to keep records. Ibid., #180, 181, 182, 15, 183-187.

i. In August, 1997, the Respondents used E-Mail to address a missing check stub, for the benefit of a "White" Operation Specialist. Prior to May 8, 1998, the Respondents installed a new E-Mail program that allowed others to access the Petitioner's E-Mail - without a password. On May 8, 1998, one or more employees accessed the Petitioner's E-Mail, and deleted a lot of work related documents. On May 11, 1998, he complained by letter, and the Respondents never replied in any form. Ibid., #189 & 190. The Petitioner is "Black."

j. Starting in June, 1998, the Respondents forced the Petitioner to give "Computer Console Training" to Summer interns. Afterwards, the Respondents gave all credit to a newly promoted "White, Female" Operation Specialist. All credit was denied to the Petitioner, a "Black" man. Ibid., #195-199.

k. In the appeal meeting on March 6, 1998, the Petitioner expressed the

belief that the Respondents have, and are, discriminating against him. Afterwards the Respondents stopped his normal rotation between Belmont and Southport; held him at Belmont, where the workload is at least 25% greater than Southport's, and allowed other Operation Specialists to rotate around him, at Belmont. Ibid., #201-231.

l. Reference Paragraph 19.k. as cited above, the Respondents forced the Petitioner to take "Cultural Diversity" Training in March, 1998, but then gave other Operation Specialists the option to take such training. Some were not even asked to attend. Ibid., #241.

m. For 1997, the Petitioner was qualified to be, at least, nominated for the "Employee Excellence Awards," but the Respondents excluded his name from the list. Ibid., #244, 242-44 & 247.

o. In December, 1998, the Respondents based the Petitioner's right to go on vacation on racial considerations. Ibid., #249-50.

p. Respondents' "Hostile Working Environment" also include security issues regarding employee safety; and, unlike the previous list for the city of Indianapolis - the Respondents' list excluded Dr. King's Birthday from the list of celebrated holidays. During this period, Black supervisors were demoted, fired, or encouraged to resign. Ibid., #16, 24-27; 49-55.

q. Other shift personnel were allowed to review their 1997 Annual

Evaluations, in private, with a Shift Supervisor. These employees are all "White." The Petitioner was denied the same consideration. The Petitioner is "Black." In the Petitioner's case, two Shift Supervisors had to be present. Ibid., #167, 168, 169-172.

r. While being engaged in "Discovery & Protected Activity," the Respondents forced, for the first time, the Petitioner to work in Solids Handling, their most dangerous, most infectious, and most polluted area. Here, the Petitioner was forced to perform Union work at the lowest skill level! On June 2, 1999, the Respondents withheld the minimum protection from such harmful process gases as Ammonia and Hydrogen Sulfide, and the Petitioner was made less alert, and walked into a pipe at moderate speed; struck his head, and suffered a partial hearing loss, a sprang neck, and an irritated throat. See Appellant's Brief, 00-3802, Pages 10-12. For medical documentation, see Appellant's Reply Brief, 00-3802, Pages 44-45.

s. Before and after the above "Irreparable Injury," the Respondents continued to find ways to violate the Petitioner's civil rights. See COMPLAINT, Pages 3-36; PLAINTIFF's MOTION TO ACCEPT EVIDENCE OF NEW EECO CHARGE, 00-3802, Pages 7 & 8-42.; PLAINTIFF's MOTION TO ACCEPT EVIDENCE OF AMENDED EEOC CHARGE, 00-3802, Pages 11-17; PLAINTIFF's MOTION TO OBTAIN RULING ON HOW TO PROCEED, 00-3802; Page 17.

t. Since 1995, for example, the

Respondents have found ways to adversely treat the Operation Specialists, when compared to other Management or Professional employees. The Petitioner has opposed this unlawful practice. See "Complaint," Pages 5, 6; the Docket Sheet of the District Court, #30, 34, 41, 54, 78, 129, & 167, for example. Also see PLAINTIFF's AFFIDAVIT IN SUPPORT OF "Plaintiff's Answer Brief," Exhibits #97, 98, 102, 107, 114, & 116.

20. <u>The Seventh Court of Appeals:</u>

a. The Seventh Court of Appeals has a "Tradition" of denying Blacks and other Minorities injunctive relief - if they are parties to suits involving unlawful discrimination in employment. See "Order" of January 3, 2K, Page Four:

> ... See Hetreed v. Allstate Ins. Co., 135 F.3d 1155, 1158 (7th Cir. 1998)(noting that interlocutory relief such as a preliminary injunction had never been granted by this court in an employment discrimination case.

b. For the period between January 25, 1999, and October 25, 2K, the Petitioner has sought relief from the Seventh Court in every possible form: appeal, motion, and writ, and all relief has been consistently denied. See APPELLANT's BRIEF, 00-3802, November 30, 2K; Page Three, for example.

c. Between the period of October 25, 2K and April 1, 2K01, and acting under the influence of an "Irreparable Injury" that the Respondents willfully

caused the Petitioner to suffer on June 2, 1999; and, while on appeal to the Seventh Court, relief was sought in the form of these motions - and all relief has been denied: (1), PLAINTIFF's MOTION TO INCLUDE REMAINING ISSUES IN APPEAL, AND TAKE JUDICIAL NOTICE OF MISCONDUCT AND PER SE VIOLATIONS, 00-3802, December 19, 2K; (2), PLAINTIFF's MOTION TO ADOPT A NEW STANDARD FOR GRANTING INJUNCTIVE RELIEF TO MEMBERS OF A PROTECTED CLASS, AND GRANT ALL DUE AND RELATED RELIEF, 00-3802, January 5, 2K01; (3), PLAINTIFF's MOTION TO ACCEPT EVIDENCE OF NEW EEOC CHARGE, 00-3802, January 24, 2K01; (4), PLAINTIFF's MOTION TO ACCEPT EVIDENCE OF AMENDED EEOC CHARGE, 00-3802, February 3, 2K01; (5), PLAINTIFF's MOTION TO OBTAIN RULING ON HOW TO PROCEED, 00-3802, March 5, 2K01; (6), and PLAINTIFF's MOTION NOT TO SANCTION, 00-3802, March 31, 2K01.

d. Between the period of October 25, 2K and May 18, 2K01, the Petitioner sought relief in the form of these documents, and all relief has been denied: (1), APPELLANT's BRIEF, 00-3802, November 30, 2K; (2), APPELLANT's REPLY BRIEF, 00-3802, January 12, 2K01; and (3), APPELLANT's PETITION FOR A REHEARING, 00-3802, April 5, 2K01.

e. In its "Order" of March 23, 2K01, the Seventh Court did the following: One, affirmed the District Court's "Judgment" for the Respondents, which held that the Petitioner failed to establish a prima facie case of discrimination against the Respondents, the moving party; P-1. Two, noted that the Respodents gave the Petitioner a

letter of reprimand, in 1997, for sending an E-Mail to more than five employees; P-2. Three, noted that the Petitioner filed four EEOC complaints against the Respondents, and filed suit in December, 1998; determined that the "Complaint" contains 17 events of alleged unlawful "Age & Race" discrimination; P-2. Four, noted that "soon" after filing suit, the Respondents announced that all 10 Operation Specialists would have to work a minimum of 28 days in Solids Handling, and that the Petitioner claims that Solids Handling is the Respondents' most dangerous work area; and, that this forced assignment was done in "Retaliation" for filing the suit in December, 1998; P-2. Five, noted that the District Court "found" that many events of alleged discrimination were either untimely, or were not included in the EEOC charges; P-2. Six, noted that the District Court "found" no evidence of a "Hostile Work Environment;" "found" no evidence of retaliation; P-2. Seven, noted that the District Court denied the Respondents' motion to sanction the Petitioner, but did grant the Respondents $2,388.17 in cost; P-2. Eight, noted that the Petitioner had not suffered any adverse employment action; P-2. Nine, Petitioner failed to argue "Pretext" on the part of the Respondents; P-2. Ten, rejected the Petitioner's recusal motion against Judge McKinney, filed in January, 1999, because it failed to meet the requirements of Title 28, Section 144. Eleven, claimed that the Petitioner failed to provide any evidence that the Respondents' counsel made false and misleading statements to him, and the Court; P-3.

Twelve, noted that the Petitioner filed, at least, 47 motions with the District Court; six appeals, and two petitions for a writ of mandamus; P-3. Thirteen, warned the Petitioner that his wrongfully bias claims against Judge McKinney are groundless, and that future filings to challenge interlocutory orders would lead to sanctions; that the Petitioner was previously fined $100.00 for such appeals; that claims of impropriety on the part of Respondents' counsel are also groundless, and that Petitioner has already filed four motions while on appeal; P-3. Fourteen, Petitioner will be given 14 days to explain why he should not be sanctioned under the Federal Rules of Appellate Procedure, Rule 32; P-3. Fifteen, denied all motions; P-3.

f. In its "Order" for May 17, 2K01 the Seventh Court fined the Petitioner $1,000.00, payable by May 30, 2K01, for "... filing a frivolous appeal." Furthermore the Seventh Court denied the Petitioner's Petition for a Rehearing, which was timely filed.

g. Part of the "Record On Appeal" include the Petitioner's or PLAINTIFF's AFFIDAVIT IN SUPPORT OF "Plaintiff's Answer Brief," June 15, 2K; Docket Items #199, 200 & 201. See PLAINTIFF's DESIGNATION OF RECORD, October 30, 2K; Page 8., Items #199, 200 & 201.

h. Prior to June 2, 1999, all injunctive relief was denied, in the final analysis, on the claim that the Petitioner failed to provide the District Court with medical evidence of injury.

After the Petitioner was made to suffer an "Irreparable Injury" on June 2, 1999, and after medical evidence was timely presented to the District Court - all injunctive relief was still denied on the authority of the Seventh Court. See Page 25, Paragraph 20.a.

i. During the time in which this case was on appeal to the Seventh Court, the Respondents still found ways to violate the Petitioner's civil rights. See Pages 25-6, Paragraph 20.c.

j. While in the Seventh Court, the Petitioner pointed out that the District Court's "Finding of Fact" is just a copy of the Respondents' "Statement of Material Facts Not In Dispute," which the Petitioner disputed. See APPELLANTS' BRIEF, 00-3802, Page 7-9.

ARGUMENT

Summary: In order for the Seventh Court of Appeals to affirm the judgment of the District Court, which granted the Respondents' Summary Judgment Motion on September 29, 2K - the Seventh Court, on March 23, 2K01, and May 17, 2K01; had to disregard reasonable evidence of per se violations of the Petitioner's Constitutional rights, to include the right to a "Fair Judicial Procedure," and civil rights, as they relate to Equal Employment Opportunity. While being engaged in "Discovery," for example, the Respondents caused the Petitioner to suffer an on-the-job, "Irreparable Injury," which has been medically documented. After the lower courts denied

the Petitioner all relief, the Respondents continued to violate his rights to Equal Employment Opportunity - even during appeal to the Seventh Court. The path that the lower courts have taken violate the Federal Rules of Civil Procedure, and Evidence; recent rulings of the Supreme Court; the intent of Congress, and the United States Constitution. The review of the Supreme Court is needed to bring "Justice" to this situation. Since the Seventh Court has a "Tradition" of denying injunctive relief on the basis "Race" & "Sex" - this process needs to be abolished!

The Seventh Court Affirms,
Determines & Fines In Error

A. Legal Standards:

1. See Page 2., "United States Constitution And Other Authority Or Law"

2. Faragher v. City of Boca Raton, 118 S. Ct. 2275, 2276; 1998:

> 9. Civil Rights
>
> Under Title VII, no affirmative defense is available to an employer on an employee's claim of vicarious liabiliy for an actionable hostile environment created by a supervisor when the supervisor's harassment culminates in a tangible employment action, such as discharge demotion, or undesirable reassignment. Civil Rights Act of 1964 64, Sec. 703(a)(1), 42 U.S.C.A. Sec. 2000e-2(a)(1).

3. General Electric Company v. Joiner, 118 S. Ct. 512, 513; 1997:

8. Federal Civil Procedure

On motion for summary judgment, disputed issues of fact are resolved against moving party. Fed. Rules Civ. Proc. Rule 56, 28, U.S.C.A.

4. Gilbert v. Homer, 138 L Ed 2d, 120, 121; 1977:

4. Due process is not a technical conception with a fixed content unrelated to time, place and circumstances; rather, it is flexible and calls for such procedural protection as the particular situademands.

5. Harris v. Forklift Systems, Inc., 126 L Ed 2d 295; 1993:

Decision: Federal District Court held to have applied incorrect standards under Title VII of Civil Rights Act of 1964 in rejecting female worker's claim alleging abusive work environment because of gender.

6. Hunt v. Cromartie, 119 S. Ct. 1545, 1546; 1999:

9. Federal Civil Procedure

In ruling on a motion for summary judgment, the nonmoving party's evidence is to be believed, and all justifiable inferences are to

to be drawn in that party's favor. Fed. Rules Civ. Proc. Rule 56)c), 28 U.S.C.A.

7. Sampson v. Murray, 39 L Ed 2d, 166, 170; 1974:

> 9. The basis of injunctive relief in the federal courts is irreparable harm and inadequacy of legal remedies.

B. Argument:

1. Per se violations: The lower courts have ignored or rejected reasonable evidence of per se violations of Petitioner's Constitutional rights, and rights to Equal Employment Opportunity. See "Material Facts To Consider," Pages 7 through 25. Involuntary servitude, denying the Petitioner the right to appeal to the "Managing Partner," falsifying the "Complaint" Procedure against the Petitioner, and denying him the right to a "Fair, Judicial Procedure," are among the list of per se violations. See "Legal Standards, Pages 26 through 28., and case of E.E.O.C. v. Board of Governors of State Colleges, 957 F.2d 424, 425 (7th. Cir. 1992).

2. Default motion denied in error: Due process and equal protection allow the Petitioner equal access and enforcement of local rules. See Page 7, Paragraph 1.; see "Legal Standards," all pages; also see the case of Tobel v. City of Hammond, 94 F.3d 360, (7th. Cir. 1996).

3. Motion to amend "Complaint:" The

District Court denied the Petitioner's motion to amend his "Complaint" in error. See the Federal Rules of Civil Procedure, Rule 15; the case of Gilbert v. Homer, as cited on P-27; Title 42, U.S.C., Section 1981, and the United States Constitution, Fifth, and Eighth Amendments.

4. An "Unconstitutional Tradition: The Seventh Court's "Tradition" of using Race or Sex, or "Protective Status," to deny injunctive relief is "Unconstitutional." See Pages 7, 9-11, 20 & 24; see the case of Sampson v. Murray, as cited on P-28; and, see Title 42, U.S.C., Section 1981, and the United States Constitution, the Fifth and Eighth Amendments. The above "Tradition" must be abolished without delay!

5. "Irreparable Injury:" While the Petitioner was engaged in "Discovery," the Respondents intended to injure him, and they did! This gross act of "Retaliation" must be severely punished. See Pages 7, 9-10, and 15-21; see the case of Faragher v. City of Boca Raton, as cited on Page 26.; Title 29, U.S.C., Section 623(d); Title 42, Sections 1981, 1983, 2000e-2(m), and 2000e-3(a); and, the United States Consitution, the First, Fifth, and Thirteenth Amendments.

6. Respondents' racist E-Mail policy: Respondents used a random E-Mail policy to racially discriminate against the Petitioner. See Pages 16-17. See Title 42, U.S.C., Sections 1981, 1983, 2000e-2(a), 2000e-2(m), and 2000e-3(a).

7. Complaint is timely: See Pages 4,

15 & 23. The combination of "Continuing Violation & Fraud" make the "Complaint" timely. See the case of Gilbert v. Homer, as cited on P-27, and Wilson v. Chrysler Corp., 172 F.3d 500, 502 (7th. Cir. 1999).

8. Pretext: A certain amount of pretext is self-evident; the rest need not be proven at this point. See Pages 4, 9, 15-23; see General Electric Company v. Joiner; Hunt v. Cromartie, as cited on Pages 27-8; and, Mills v. Health Care Serv. Corp., 171 F.3d 450, 451 (7th. Cir. 1999).

RELIEF

On the authority cited on Pages 2, and 26-30, and to help correct a great injustice against the Petitioner; the Supreme Court is asked to reverse the Seventh Court's "Orders" of March 23, 2K01, and May 17, 2K01, and grant the Petitioner fair monetary damages; or, any other fair relief, with full discovery rights, including mandatory assignments to Solids Handling, and rights to amend his "Complaint," given the Respondents' continued violations. Two, abolish the "Tradition" of the Seventh Court, where Race or Sex, or "Protective Class Status" is used to deny injunctive relief. This "Tradition" is Unconstitutional, and cannot be allowed to stand!

Sincerely,

Louis F. Gaines, Pro Se 8-2-2K01

APPENDIX

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PART ONE

Seventh Court's Order of March 23, 2K01

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

UNITED STATES COURT Of APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Submitted March 5, 2001
Decided March 23, 2001

Before

Hon. FRANK EASTERBROOK, Circuit Judge

Hon. DANIEL A. MANION, Circuit Judge

Hon. DIANA P. WOOD, Circuit Judge

No. 00-3802

LOUIS F. GAINES,
Plaintiff-Appellant,

v.

WHITE RIVER ENVIRONMENTAL PARTNERSHIP, Et Al., Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division

No. 98-1741-C-M/S

LARRY J. McKINNEY, Chief Judge

ORDER

Louis Gaines, an African-American employed as an Operation Specialist for the defendants White River Environmental Partnership (WREP), filed this employment discrimination suit in December

1998 under Title VII, 42 U.S.C. 2000e et seq.; the Age Discrimination in Employment Act, 29 U.S.C. Sec. 621-34; and 42 U.S.C. 1981. The district court granted summary judgment for the defendants, holding that Gaines had not established a prima facie case of discrimination. Gaines appeals and we affirm.

Gaines has held his job at WREP since January 1994. In 1997 WREP began sending Operation Specialists by airplane to training sessions in Cleveland, Ohio. Gaines wanted to travel by car or bus and sent numberous e-mails about the issue to over 30 coworkers and supervisors. Gaines was warned repeatedly that he was using the e-mail system inappropriately by airing the dispute among numerous uninvolved coworkers, and that he should limit future e-mails to no more than five recipients. When Gaines continued to send mass e-mails, he received a written reprimand, and the incident was noted in his 1997 annual evaluation.

Gaines believes this discipline evidenced discrimination, and after filing four charges with the EEOC, he sued in December 1998 alleging age and race discrimination. His complaint set forth 17 events that Gaines believes demonstrate that WREP is discriminating against him and maintaining a 'Hostile Work Environment.' The bulk of the allegations relate to his e-mail abuses and to decisions about shift rotation and training sessions. Soon after Gaines filed suit, WREP announced that all 10 of its Operation Specialists would be required to work at least 28 days per year in the

Solids Handling department. Gaines describes this as the most dangerous department at WREP and alleges that WREP transferred him to retaliate for his December 1998 lawsuit.

The district court granted summary judgment to WREP IN September 2000. The court found that many of the events upon which Gaines based his discrimination claim could not be considered because they did not occur within 300 days prior to his filing charges with the EEOC, or because they were not included in the charges. With respect to the claims that remained, the court concluded that Gaines could not establish a prima facie case of discrimination because none led to or demonstrated an adverse employment action. The court also found that there was no evidence to support Gaines' contention of a hostile work environment or that WREP had retaliated against Gaines for filing suit. Finally, the court denied WREP's motion for sanction and indicated that WREP was entitled to costs. In a later order, it set the amount of costs Gaines had to pay at $2,388.17.

On appeal Gaines merely reasserts that WREP discriminated against him. The district court correctly concluded, however, that Gaines failed to establish a prima facie case of discrimination, because none of his allegations demonstrate a material change in the terms or conditions of his employment. See Fyfe v. City of Fort Wayne, Ind.,_F.3d_, 2001 WL 171173 (7th Cir. 2001); Rabinotitz v. Pena, 89 F.3d 482, 488 (7th Cir. 1996). The only specific allegations warranting mention relate to the letter

of reprimand and negative performance review Gaines received because of the e-mail incident, and to his transfer to a different shift. None of these incidents constitutes adverse employment action. See e.g. Smart v. Ball State Univ. 89 F.3d 437, 441-42 (7th Cir. 1996); Flaherty v. Gas Research Inst., 31 F.3d 451, 456 (7th Cir. 1994). Furthermore, even if Gaines had set forth a prima facie case, he has provided no argument that WREP's reasons for its actions are pretextual, instead arguing (erroneously) that he is not required to show a genuine issue of fact relating to pretext.

Gaines also asserts that Judge McKinney was biased against him. Gaines filed a motion for recusal in the district court under 28 U.S.C. Sec. 144 in January 1999. When Gaines attempted to challenge the denial of that motion through a petition for a writ of mandamus, we informed Gaines that the issue was more properly raised on an appeal from the final judgment but warned him that his bias theory appeared meritless because it was based solely on adverse rulings that Judge McKinney rendered on his motions. See Gaines v. White River Environmental Partnership, Nos. 99-1422, 99-38-99, 99-4048, 99-2111, 2000 WL 6199, at *2(7th Cir. January 3, 2000); Marozsan v. United States, 90 F.3d 1284, 1290(7th Cir. 1996). Gaines's allegations against Judge McKinney once again consist of nothing more than complaints about adverse rulings and therefore we reject them for failure to satisfy the requirements of Sec. 144.

Gaines further alleges that WREP's counsel made false and misleading statements to Gaines and filed false and misleading documents with the court which prevented him from establishing his case. He requests that we sanction WREP for these activities. Gaines has not supported this argument by identifying as much as a single false document or statement in the record. We thus find no error in the district court's rejection of his request for sanctions.

Gaines also complains that the district court assessed the costs of suit against him. Although the time for filing a notice of appeal directed to the order fixing the amount of costs has long since expired, Gaines is argu-ing only that the part of the district court's order on summary judgment establishing WREP's entitlement to costs is erroneous. That issue is properly before us. See, e.g. John v. Barron, 897 F.3d 1387, 1390 (7th Cir. 1990). Nonetheless, we review such a ruling only for an abuse of discretion and find none here. See Manley v. City of Chicago, 236 F.3d 392, 398 (7th Cir. 2001).

Finally, we not that Gaines's spurious allegations against Judge McKinney and defense counsel are nothing new. Over the two-year life of this case, Gaines filed at least 47 motions in the district court, many of them repetitive and most of them alleging improprieties by Judge McKinney and defense counsel. Gaines has also filed a total of six appeals and two petitions for writs of mandamus prior to this appeal challenging the denial of these motions, and in

most of these filings he repeated his allegations of impropriety. We warned Gaines that his allegations against Judge McKinney were groundless and that future challenges to interlocutory orders would lead to sanctions. See Gaines, 2000 WL 6199, at *2. When Gaines filed another appeal challenging interlocutory order, we sanctioned him $100. Despite these warnings, Gaines has continued his strategy on direct appeal. In a matter of two months, he has already filed four motions with this court, all of which were denied. Gaines's brief barely addresses the merits of his underlying discrimination claim, which is perhaps not surprising given how weak that claim is. Instead his brief reiterates his baseless allegations against Judge McKinney and defense counsel. Such behavior will not be tolerated, even from a pro se litigant, and therefore we order Gaines to show cause within 14 days from this order why sanctions should not be imposed against him under Federal Rule of Appellate Procedure 38.

For the foregoing reasons, we Affirm the grant of summary judgment to WREP. All pending motions in this case are Denied.

PART TWO

Other Relevant Rulings

UNITED STATES COURT Of APPEALS
For The Seventh Circuit
Chicago, Illinois 60604

February 7, 2001

Before

Hon. Daniel A. Manion, Circuit Judge

LOUIS F. GAINES, Plaintiff-Appellant	Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.
v.	
WHITE RIVER ENVIRONMENTAL PARTNERSHIP, IWC RESOURCES CORPORATION, UNITED WATER SERVICES, Et Al., Defendants-Appellees.	No. 98 C 1741 Larry J. McKinney, Chief Judge

The following are before the court:

1. PLAINTIFF's MOTION TO ACCEPT EVIDENCE NEW EEOC CHARGE, filed on January 29, 2001, by pro se appellant.

2. PLAINTIFF's MOTION TO ACCEPT EVIDENCE OF AMENDED EEOC CHARGE, filed on February 5, 2001, by pro se appellant.

IT IS ORDERED that #1 and #2 are DENIED.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

January 11, 2001

By the Court:

LOUIS F. GAINES, Plaintiff-Appellant, v. No. 00-3802 WHITE RIVER ENVIRONMENTAL PARTNERSHIP, IWC RESOURCES CORPORATION, UNITED WATER SERVICES, Et Al., Defendants-Appellees.	Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division. No. 98 C 1741 Larry J. McKinney, Chief Judge

IT IS ORDERED that the PLAINTIFF's MOTION TO ADOPT A NEW STANDARD FOR GRANTING INJUNCTIVE RELIEF TO MEMBERS OF A PROTECTED CLASS, AND GRANT ALL DUE AND RELATED RELIEF, filed on January 9, 2001, by pro se appellant,

IT IS ORDERED that the motion is DENIED.

UNITED STATES COURT OF APPEALS
For The Seventh Circuit
Chicago, Illinois 60604

January 4, 2001

Before

Hon. Diane P. Wood, Circuit Judge

LOUIS F. GAINES, Plaintiff-Appellant, No. 00-3802 v. WHITE RIVER ENVIRONMENTAL PARTNERSHIP, IWC RESOURCES CORPORATION, UNITED WATER SERVICES, Et Al., Defendants-Appellees.	Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division. No. 98 C 1741 Larry J. McKinney, Chief Judge

Upon consideration of the PLAINTIFF'S MOTION TO INCLUDE REMAINING ISSUES IN APPEAL, AND TAKE JUDICIAL NOTICE OF MISCONDUCT AND PER SE VIOLATIONS, filed on December 22, 2000, by pro se appellant,

IT IS ORDERED that the motion is DENIED. The appellant is reminded that he must file a new notice of appeal if he is dissatisfied with the district court's ruling on his motion under Federal Rule of Civil Procedure 60(b).

UNITED STATES COURT OF APPEALS
For The Seventh Circuit
Chicago, Illinois 60604

August 13, 1999

Before

Hon. William J. Bauer, Circuit Judge
Hon. Daniel A. Manion, Circuit Judge
Hon. Ilana Diamond Rovner, Circuit Judge

LOUIS F. GAINES, Plaintiff-Appellant, No. 99-2376 v. WHITE RIVER ENVIRONMENTAL PARTNERSHIP, IWC RESOURCES CORPORATION, UNITED WATER SERVICES, Et Al., Defendants-Appellees.	Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division. No. 98 C 1741 Larry J. McKinney, Judge

ORDER

On consideration of the "JURISDICTIONAL MEMORANDUM" filed by appellees on June 14, 1999, and the "PLAINTIFF'S JURISDICTIONAL MEMORANDUM" filed June 16, 1999, and review of the short record,

IT IS ORDERED that this appeal is DISMISSED for lack of jurisdiction. Generally, an appeal may not be taken in a civil case until a final judgment

disposing of all claims against all parties is entered on the district court's civil docket pursuant to Fed. R. Civ. P 58 See *Cleaver v. Elias*, 852 F.2d 266 (7th Cir. 1988)

In the present case, appellant appeals various interlocutory orders regarding discovery and the management of appellant's case. Plaintiff-appellant's case continues in the district court. Therefore, this appeal is premature.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

June 21, 1999

Before

Hon. Diane P. Wood, Circuit Judge

LOUIS F. GAINES, Plaintiff-Appellant, Nos. 99-1422 and 99-2111 v. WHITE RIVER ENVIRONMENTAL PARTNERSHIP, IWC RESOURCES CORPORATION, UNITED WATER SERVICES, Et Al., Defendants-Appellees.	Appeals from the United States District Court for the Southern District of Indiana, Indianapolis Division. No. 98 C 1741 Larry J. McKinney, Judge

Upon consideration of PLAINTIFF'S MOTION TO CONSIDER ADDITIONAL INFORMATION, filed on June 10, 1999, by the pro se appellant,

IT IS ORDERED that the motion is DENIED without prejudice to renewal in the district court.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

June 7, 1999

By the Court:

LOUIS F. GAINES, Plaintiff-Appellant, No. 99-2376 v. WHITE RIVER ENVIRONMENTAL PARTNERSHIP, IWC RESOURCES CORPORATION, UNITED WATER SERVICES, Et Al., Defendants-Appellees	Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division. No. 98 C 1741 Larry J. McKinney, Judge

ORDER

A preliminary review of the short record indicates that the order appealed from may not be a final appealable judgment within the meaning of 28 U.S.C. Sec. 1291.

Generally, an appeal may not be taken in a civil case until a final judgment disposing of all claims against all parties is entered on the district court's civil docket pursuant to Fed. R. Civ. P. 58. See *Cleaver v. Elias*, 852 F.2d 266 (7th Cir. 1988).

In the present case appellant appeals various interlocutory orders

regarding discovery and the management appellant's case. Plaintiff-appellant's case continues in the district court. Therefore, it appears that appeal is premature. Accordingly,

IT IS ORDERED that both appellant and appellees shall file, on or before June 17, 1999, a brief memorandum stating why this appeal should not be dismissed for lack of jurisdiction. A motion for voluntary dismissal pursuant to Fed. R. App. P. 42(b) will satisfy this requirement. Briefing shall be suspended pending further court order.

NOTE: Caption document "JURISDICTIONAL MEMORANDUM." The filing of a Circuit Rule 3(c) Docketing Statement does not satisfy your obligation under this order.

UNITED STATES COURT Of APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Submitted May 15, 2000
Decided May 19, 2000

Before

Hon. FRANK H. EASTERBROOK, Cir. Judge

Hon. ILANA DIAMOND. ROVNER, Cir. Judge

Hon. DIANE P. WOOD, Cir. Judge

LOUIS F. GAINES, Plaintiff-Appellant, No. 00-2165 v. WHITE RIVER ENVIRONMENTAL PARTNERSHIP, IWC RESOURCES CORPORATION, UNITED WATER SERVICES, Et Al., Defendants-Appellees.	Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division. No. 98 C 1741 Larry J. McKinney, Judge

The following are before the court:

1. PLAINTIFF'S MOTION FOR STAY OR TIME EXTENSION, filed on May 15, 2000, by the pro se appellant.

2. MOTION TO DIRECT DISTRICT COURT TO ACCEPT PLAINTIFF'S LEGAL & REQUIRED FILING, filed on May 15, 2000, by the pro se appellant.

On January 3, 2000, we affirmed two decisions of the district court and denied two of Louis Gaines's petitions for writs of mandamus stemming from the underlying case, admonishing him that future efforts to obtain immediate review of interlocutory orders would run the risk of sanctions pursuant to Federal Rule of Appeallate Procedure 38. See Gaines v. White River Environ. Partnership, Nos. 99-1422 & 99-2111, 2000 WL 6199 (7th Cir. Jan. 3, 2000) (unpublished order). On April 3, 2000, the district court issued an interlocutory order granting, denying, or taking no action to 11 of Mr. Gaines's motions, and he filed an interlocutory appeal under 28 U.S.C. Sec. 1292(b) on May 4, 2000.

Orders otherwise not appealable as final orders may be reviewed only if (1) the district court certifies the order in writing as involving a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal may materially advance the ultimate termination of the litigation; (2) application is made to the court of appeals within 10 days of the district court's order; and (3) the court of appeals, in its discretion, permits the certified appeal to proceed. 28 U.S.C., Sec. 1292(b); Hewitt v. Joyce Beverages of Wisconsin, 721 F.2d 625, 626 (7th Cir. 1983). The district court did not certify its order for interlocutory review within 10 days of the order. See Weir v. Probst, 915 F.2d 283, 286 (7th Cir. 1990). Accordingly,

IT IS ORDERED that appeal no.

00-2165 is DISMISSED for lack of jurisdiction, and the Mr. Gaines's request for a stay of proceedings or an extension of time, and judicial notice, are DENIED as moot.

To the extent that Mr. Gaines seeks to compel the district court to accept copies of his first mandamus petition for filing in the district court, and to allow him to engage in unspecified discovery, we construe those requests as petitions for mandamus, and FURTHER ORDER that the petitions are DENIED.

IT IS FINALLY ORDERED that, pursuant to Federal Rule of Appellate Procedure 38, appellant Louis F. Gaines is sanctioned in the amount of $100 for filing a frivolous appeal. Mr. Gaines shall tender a check payable to the Clerk, United States Court of Appeals, in the amount of $100 by June 2, 2000.

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Submitted Dcember 16, 1999*
Decided January 3, 2000

Before

Hon. FRANK H. EASTERBROOK, Cir. Judge

Hon. ILANA DIAMOND ROVNER, Cir. Judge

Hon. DIANE P. WOOD, Cir. Judge

Nos. 99-1422 & 99-2111

LOUIS F. GAINES,
Plaintiff-Appellant,

v.

WHITE RIVER ENVIRONMENTAL, Et Al.,
Defendant-Appellee

Appeals from the United States District Court for the Southern District of Indiana Indianapolis, Division.

No. 98-1741-C-M/S

Larry J. McKinney, Judge.

No 99-3899 & 99-4048

IN THE MATTER OF
LOUIS F. GAINES,
Petitioner.

Petitions for Writs of Mandamus to the United States District Court

for the Southern District of Indiana, Indianapolis Division

No. 98-1741-C-M/S

Larry J. McKinney, Judge.

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* After an examination of the briefs and records, we have concluded that oral argument is unnecessary. Thus, appeal number 99-1422 and appeal number 99-2111 are submitted on the briefs and the records. See Fed. R. App. P. 34(a).

ORDER

Louis Gaines, an African-American male employed as an Operation Specialist for defendant White River Environmental Partnership (WREP), filed this employment discrimination suit in December 1998 under Title VII and the Age Discrimination in Employment Act. In early 1999, Gaines twice moved for a preliminary injunction to prevent what he believed was retaliatory behavior by WREP. The district court denied each request, and Gaines appeals both rulings. Also before us are two petitions for writs of mandamus seeking to compel Judge

McKinney to grant leave to file an amended complaint and also to recuse himself from the case. We affirm the denials of injunctive relief and deny Gaines' petitions for writs of mandamus.

Gaines has held his current job since January 1994. After filing four charges with the EEOC, he sued in December 1998 alleging discrimination based on race and age. His complaint set forth a litany of events that Gaines believes shows that WREP is maintaining a 'Hostile Working Environment.' Most of his allegations relate to a dispute over the use of the company's e-mail system and WREP's denials of Gaines' requests for job transfers and training opportunities.

In January 1999, WREP announced that all ten of its operation specialists would be required to work at least 28 days per year in the Solids Handling department. Gaines describes this as the most dangerous department at WREP and believes that WREP is sending him there to retaliate for his December 1998 lawsuit. On February 4, Gaines sought a preliminary injunction to prevent implementation of the new work assignment. The district court ordered Gaines to 'tender' his proposed preliminary injunction by February 10. This order apparently confused Gaines, who 'tendered" $105 as a filing fee and noted that he is seeking $1.2 million in damages.

The district court denied Gaines'

motion, characterizing it as little more than an itemization of the money damages Gaines wants. Gaines filed a notice of appeal, which we docketed as case number 99-1422.

In addition to taking an appeal, Gaines also moved again for a preliminary injunction. This time, in ordering Gaines to tender a proposed injunction, the district court carefully set forth the legal standards for a preliminary injunction and reminded Gaines to submit both facts and legal analysis in support of his motion. Later the court ordered Gaines to supplement his motion with various medical records. After Gaines on April 22 moved for an immediate ruling, the district court refused to issue the preliminary injunction. Judge McKinney concluded that Gaines had failed to identify evidence and circumstances warranting a preliminary injunction and, additionally, had not complied with the district court's order to provide medical records. Gaines filed another appeal, which we docketed as case number 99-2111.

Gaines gives us no reason to reverse the district court. A preliminary injunction will not be granted absent a showing that the movant is likely to prevail on the merits, lacks an adequate remedy at law, and will suffer irreparable harm without immediate relief. See Ferrell v. United States Dep't of Hous. and Urban Dev., 186 F.3d 805, 811 (7th Cir. 1999). But Gaines does not directly address any of these factors or demonstrate how his motions satisfied them. Instead, Gaines rehashes his

assertions that WREP is retaliating by requiring him to work in the Solids Handling department, though he still offers no reason to conclude that he is being treated differently than any of the other nine Operation Specialists. Nor does he explain his failure to comply with the district court's demand for medical records. We observe that Judge McKinney

carefully explained what Gaines must do to obtain a preliminary injunction and pointed him towards evidence that might support his request. In light of this, we fail to see how the district court abused its discretion in denying Gaines' motions, especially since such interlocutory relief is rare in employment discrimination cases. See Hetreed v. Allstate Ins. Co., 135 F.3d 1155, 1158 (7th Cir. 1998)(noting that interlocutory relief such as a preliminary injunction had never been granted by this court in an employment discrimination case).

While appeals were pending, Gaines also filed with us two petitions for writs of mandamus. The first, number 99-3899, seeks to compel the district court to accept his amended complaint. A decision on a motion to amend a complaint is not immediately appealable, but rather is reviewable at the end of the case. See Wingerter v. Chester 185

F.3d 657, 662 (7th Cir. 1999); Bisciglia v. Kenosha Unified School Dist. No. 1, 45 F.3d 223, 229-230 (7th Cir. 1995)(reversing in part due to an erroneous denial of a motion to leave to amend a complaint). A writ of mandamus is an extradordinary remedy which is not to be used as a replacement for an appeal. See Eisenberg v. United States Dist. Court for the Southern Dist. of Illinois, 910 F.2d 374, 375 (7th Cir. 1990). Furthermore, since the decision is reviewable at the end of the case, Gaines will not suffer irreparable harm without the writ, see In re Rhone-Poulenc Rorer Pharmaceuticals, Inc., 138 F.3d 695, 697 (7th Cir. 1998), and, this we deny the writ.

The second petition, number 99-4048, calls for the recusal of Judge McKinney because of his alleged bias against Gaines. Gaines filed a motion for recusal and a supporting affidavit in district court under 28 U.S.C. Sec 144 in January 1999. The denial of that motion is reviewable on appeal, see United States v. Towns, 913 F.2d 434, 443 (7th Cir. 1990), and therefore it is not an

appropriate subject for mandamus because Gaines cannot show he will suffer irreparable harm without the writ, see In re Rhone-Poulenc, 138 F.3d at 697. Furthermore, Gaines' claim is based only on adverse rulings that Judge McKinney rendered on his motions, and is therefore meritless. See Marozsan v. United

States, 90 F.3d 1284, 1290 (7th Cir. 1996).

In closing, we note that Gaines has filed a total of five appeals and two petitions for writs of mandamus with this court over the one-year life of his lawsuit. In this court he continues to challenge interlocutory rulings despite having been informed in three cases already decided that our authority to review decisions of the district court that are not yet final is limited. Accordingly, we admonish Gaines that future efforts to obtain immediate review of interlocutory orders run the risk of sanctions under Federal Rule of Appeallate Procedure 38.

For the foregoing reasons, we AFFIRM the judgments in appeal number 99-1422 and appeal number 99-2111, and DENY the petitions for writs of mandamus in case number 99-3899 and case number 99-4048.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LOUIS F. GAINES,
Plaintiff

IP 98-1741-C-M/S

v.

WHITE RIVER ENVIRONMENTAL PARTNERSHIP, et al.,
Defendants

ENTRY DISCUSSING SELECTED NON-DISPOSITIVE MOTIONS

Plaintiff Gaines has filed a number of motions attacking the veracity of the materials submitted by the defendants in support of their motion for summary judgment, seeking the affirmative relief to which he believes he would be entitled if he prevails in this case, and continuing his challenge to various aspects of the court's processess and rulings in this case.

The motions just referred to are the following:

Motion	Date Filed
Motion for court to deny the defendants' summary judgment	May 5, 2000
Motion for Additional Summary Judgment Relief	May 19, 2000

Motion to deny defendants' motion for time enlargement, and for all due relief	July 17, 2000
Motion for relief from defendants' continuous civil rights violations	July 10, 2000
Motion for relief defendants' perjury	July 5, 2000
Objections to Judge McKinney's Entry of 6-19-2K	July 5, 2000

Mr. Gaines has had ample opportunity to respond to the defendants' motion for summary judgment, and he has done so. He has participated in the development of this action with vigor and tenacity. He has conducted discovery as contemplated by the Federal Rules of Civil Procedure. His arguments concerning the defendants' 'perjury' and other aspects of his employment situation of of the matters submitted in connection with this lawsuit are either properly addressed through the ruling on the defendants' motion for summary judgment (though blanket accusations of 'perjury' will not generally suffice to create a genuine issue of fact sufficient to defeat a motion for summary judgment, Kissell v. Breskow, 579 F.2d 425, 428 (7th Cir. 1978)), or premised on what has not yet occurred, i.e., Mr. Gaines demontrating that he is entitled to prevail in this action. Further, Mr. Gaines' dissatisfaction with the course of the

proceedings has been addressed on numerous occasions and warrants no further analysis here. Suffice it to note, again, that Mr. Gaines' claims have received every possible consideration, as has his effort to proceed effectively in this case. His insistence otherwise is without foundation.

Accordingly, the motions filed by the plaintiff referred to above are each denied.

IT IS SO ORDERED.

s/ LARRY J. McKINNEY, Judge
United States District Court

Date: September 29, 2000

Copies to:

Louis F. Gaines, 5337 N. College Avenue, Indianapolis, IN 46220

Hudnall Pfeiffer, Carolyn Coleman; Baker & Daniels, 300 N. Meridian St., Suite 2700; Indinapolis, IN 46204.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LOUIS F. GAINES, IP 98-1741-C-M/S
Plaintiff

v.

WHITE RIVER ENVIRONMENTAL
PARTNERSHIP, et al.,
Defendants

ENTRY DISCUSSING MOTIONS FOR SUMMARY JUDGMENT AND FOR SANCTIONS

Louis Gaines, an African-American male, sues his employer, White River Environmental Partnership (WREP), and its affiliate entities under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C., Sec. 1981, and the Age Discrimination in Employment Act ('ADEA'), 29 U.S.C, Sec. 621, et seq. The focus of Gaines' allegations is a dispute over the use of WREP's e-mail system and WREP's denial of Gaines requests for job transfers and training opportunities.

The defendants seek resolution of Gaines' claims through the entry of summary judgment. Gaines has opposed the defendants' motion.

I. Summary Judgment

A. Summary Judgment Standards and Methodology

Rule 56(c) of the Federal Rules of Civil Procedure provides that a motion for summary judgment shall be granted 'if the pleading, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitle to a judgment as a matter of law.' A 'material fact' is one that 'might affect the outcome of the suit.' Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute is genuine only if a reasonable jury could find for the nonmoving party. Id.

'Summary judgment is appropriate--in fact, is mandated--where there are no disputed issues of material fact and the movant must prevail as a matter of law.' Dempsey v. Atchison, Topeka and Santa Fe Ry. Co., 16 F.3d 832, 836 (7th Cir.), cert. denied, 513 U.S. 821 (1994).

> In evaluation the appropriateness of summary judgment, three steps are necessary: (1) determining whether a fact is material; (2) determining whether there is a genuine issue for the trier of fact, as determined by the documents submitted to the court; and (3) considering that evidence in light of the appropriate standard of proof, Anderson, 477 U.S. at 248, 106 S. Ct. at 2510. As to materiality, only disputes over facts that might affect the outcome of the suit

> under the governing law will properly preclude the entry of summary judgment. Factual disputes which are irrelevant or unnecessary will not be considered. Id.

Barone v. Hatcher, 984 F. Supp. 1305, 1306 (D. Nev. 1997).

'After one party has filed a motion for summary judgment, the burden shifts to the non-moving party to show through specific evidence that a triable issue of fact remains on issues (on) which the nonmovant bears the burden of proof at trial.' Pharma Bio, Inc. v. TNT Holland Motor Express, Inc. 102 F.3d 914, 916 (7th Cir. 1996)(quoting Walker v. Shansky, 28 F.3d 666, 670-71 (7th Cir. 1994)). 'A failure of proof on any one of the essential elements of the plaintiff's prima facie case makes all other facts immaterial.' Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

B. Gaines as Pro Se Litigant

Because the defendants seek the entry of summary judgment, and because Gaines is proceeding without counsel, the notice required by Lewis v. Faulkner, 689 F.2d 100 (7th Cir. 1982), and by Local Rule 56.1, was issued. Through this notice, Gaines was notified of the nature of the motion for summary judgment, the proper manner in which to respond, and the consequences of failing to respond. This information assures that Gaines' claims receive the fair and meaningful consideration to which they are entitled, within the scope of

applicable rules of procedure and, of course, the substantive law. Gaines has responded to defendants' motion by stating in conclusory fashion that the defendants' statement of material facts not in dispute contains 'evasive, false, and/or misleading statements.' As will be seen, this type of response is unhelpful to the court and is not efficacious in creating a genuine question of fact.

II. Findings of Facts and Conclusions of Law

A. Findings of Fact

A. On the basis of the pleadings and the expanded record, the court makes the following findings of fact:

1. In 1994, WREP, a partnership among IWC Resources Corporation, United Water Services, and Lyonnaise des Eaus, began operating Indianapolis' Advanced Wastewater Treatment and Collection System (the 'Plant'). The Plant has two facilities: Belmont and Southport.

2. In 1994, WREP hired Gaines as an Operation Specialist, a position similar to the one he held when the City of Indianapolis operated the Plant.

3. In June, 1997, to help test new plant equipment, WREP began scheduling its Operation Specialists to travel by plane to visit the Cleveland Ohio facility, where the equipment was being manufactured.

4. Between June 24, 1997 and July 2, 1997, Gaines sent several e-mails to the trip coordinator in which he expressed his preference to travel by bus, rather than by plane or car, for safety reasons. Gaines also sent copies of some of these e-mails to over 30 individuals, including the Operations Department Assistant Manager, George Russell.

5. On July 2, 1997, Russell sent an e-mail to Gaines and informed him that, because of his concerns about travel safety, he would not be required to go to Cleveland.

6. On July 4, 1997, Gaines sent another e-mail to Russell in which he defended his position regarding the Cleveland trip.

7. On July 7, 1997, Russell responded to Gaines' latest e-mail and told Gaines that he had blown the situation out of proportion, and that if he did not want to go to Ohio, all he had to do was say he was not interested. In this e-mail, Russell also questioned why Gaines felt it necessary to involve so many people in this matter.

8. On July 8, 1997, Gaines sent an e-mail to Human Resources in which he complained that Russell's e-mail contained 'distorted' information. Gaines requested that Human Resources review the situation so that 'fairness will be allowed to prevail.'

9. Later than day, Operation Manager Pam Wolsiefer-Leak responded to Gaines'

latest e-mail and told Gaines that he had 'taken this whole thing way out of context' and was using the e-mail system inappropriately.

10. Wolsiefer-Leak also told Gaines that she expected Gaines to send e-mail only to her, Russell, or his supervisor, and if they could not resolve a problem between the three of them, he should then meet with Human Resources.

11. On July 10, Wolsiefer-Leak and Russel met with Gaines regarding his comlaint and told him that (1) he was sending too many e-mails; (2) he would be restricted in the future to sending e-mail to no more than five people; and (3) that he had blown Russell's e-mail out of proportion.

12. On July 11, Gaines sent an e-mail to 23 employees regarding job interview schedules.

13. On July 16, WREP issued Gaines a letter of reprimand for insubordination because he ignored the e-mail restriction placed on him on July 10.

14. On September 5, 1997, Gaines sent a letter to his supervisor, with copies to Wolsiefer-Leak and Russell, in which he stated that he and another Operation Specialist Everett (Harlan) Pate had agreed to a schedule for rotating between Belmont and Southport.

15. On September 12, 1997, Gaines' supervisor informed Gaines that Pate denied having made an agreement with Gaines and that the schedule Gaines

proposed would not be enforced. Gaines' supervisor scheduled Gaines and Pate each to work two weeks a month in each facility.

16. Between September 15 and October 7, Gaines sent multiple e-mails to multiple individuals, including Russell, complaining about the failed attempt to work out a rotation agreement with Pate.

17. On October 7, Russell sent an e-mail to Gaines that 'we need to move forward and get this behind use (sic), and let it be understood that people misunderstand each other at time(s).' Russell also wrote that 'working with each other is part of your duties and responsibilities as employees, and it will be evaluated when your annual performance appraisals are completed.' Russell also 'insist(ed) that no further discussion about this issue take place on E-mail.'

18. On October 14, Wolsiefer-Leak, Russell, and Barnes met with Gaines and Pate to discuss Gaines' concerns about the rotation schedule. Based on what she heard during that conversation, Wolsiefer-Leak concluded that Gaines had not been treated unfairly.

19. In October 1997, Russell announced that one or two Operation Specialists would be reassigned to different shifts so that there would be a mix of experienced Operation Specialist with less experienced Operation Specialists on each shift.

20. Effective November 17, 1997, WREP

transferred Gaines, who was one of the most experienced Operations Specialists, to the second shift at Belmont. Gaines' new supervisor was Tom Wills.

21. During 1997, over 125 black and white employees, some over 40 years of age and some under 40 years of age, were nominated by other employees for the annual 'We Make A Difference' program, which is a company-wide employee incentive program. Gaines, although eligible, received no nominations.

22. In January 1998, Russell wrote, in part, the following in Gaines 1997 performance review:

Louis needs to improve some aspects of his communication skills. Louis does a good job verbally communicating to others about plant process related information and plant problems; however, he all too frequently creates issues about items which should not involve others and he routinely challenges standard management practices. Louis has the tendency to pull others into his issues even if their job responsibilities and performance are not involved. This became so disruptive to other employees in 1997 that Louis was instructed not to copy others (besides his direct supervisor and operational management) on the company E-mail system when they had no direct involvement in the topic. Disciplinary action had to be taken after several verbal warnings because Louis continued to copy those not involved.

23. Gaines' overall rating for this evaluation was 'meets expectations.'

24. On February 25, 1998, Ken Barnes and Tom Wills, who both supervised Gaines during the 1997 performance year, planned to meet jointly with Gaines to conduct his 1997 performance review. When Gaines realized that both supervisors, rather than just Barnes, would be conducting the review, he 'took a no comment position.'

25. When Gaines complained, Wolsiefer-Leak explained to him that both supervisors were asked to be present for his performance review because WREP 'felt it would be good for Tom to be there since he is setting (Gaines') goals and objectives for 1998.'

26. In March 1998, WREP temporarily stopped rotating Operation Specialists between Southport and Belmont to accomodate Operation Specialists training at the Southport facility. Russell, however, wanted to maintain a mix of experienced and inexperienced Operations Specialists at each facility. He selected Gaines, who was experienced with the control system equipment, to remain at Belmont with Barb Miller and George Sawyer, who were less experienced than Gaines. WREP resumed rotating Operation Specialists between the two facilities in February 1999.

27. Operations Department employees do not have set lunch schedules. Depending on plant conditions and personnel availability, employees occasionally are expected to take their lunch breaks at their work stations so that their work stations are not left unstaffed.

28. On March 10, 1998, Gaines sent an e-mail to his supervisor, Tom Wills, Russell, and Wolsiefer-Leak in which he complained he did not get to take a lunch break outside the console room on March 9 because Wills, his normal lunch relief, was unavailable.

29. Russell sent a response to Gaines in which he stated, in part, that 'Operations does not have (a) defined lunch period .... Everyone is expected to eat when they have the opportunity, everyone in operation know (sic) that this is the way it is supposed to work.... We have used this approach since WREP took over the operations of the plant....'

30. In March 1998, WREP scheduled cultural diversity training for its employees. Three Operation Specialists, Gaines, Jeffery Suggs (who is black) and George Sawyer (who is white) attended the training.

31. On March 18, 1998, Gaines met with Suever to review his personnel file. Before allowing Gaines to review his file, Suever discovered a document that had been misfiled and she removed it from the file.

32. In April or May of 1998, WREP upgraded its e-mail system. Due to programming errors, system users were able to access the mailboxes of other users. Shortly after the system was upgraded, Gaines complained to Wolsiefer-Leak that an unidentified someone had deleted some of his files. He also told Wolsiefer-Leak that he wanted her to send an

e-mail to all employees to tell the unidentified culprit to stop deleting Gaines' e-mail.

33. Wolsiefer-Leak did not send the e-mail that Gaines requested because she thought that the problem had been resolved and did not warrant the response Gaines requested.

34. In June, Gaines and Barb Miller, another Operations Specialist, trained summer interns on the computer console as part of the company's summer internship program. Miller, who was also a volunteer intern for the program, was later mentioned in an article about the program that appeared in the company newsletter; Gaines was not. The content of the articles in the company newsletter is left to the editorial discretion and judgment of its publishers; not the Operations Department.

35. In November 1998, WREP scheduled and conducted about three hours of raw pump training for the Operation Specialists who were assigned to Southport. The Operation Specialist who did not receive the training at this time would be trained later by those who had attended the training. Gaines, who was assigned to Belmont, did not receive this training at that time.

36. On November 20, 1997, Gaines filed a 97-page complaint with Human Resources about WREP's conclusion that he had not been treated unfairly with respect to the rotation schedule.

37. On December 4, 1997, Gaines met

with the Project Manager Richard Farnham, Acting Human Resources Manager Ginny Suever, Wolsiefer-Leak, and Russell regarding the rotation schedule. Gaines' request for a written determination by Farnham on this issue was denied.

38. On December 8, 1997, Gaines sent a 17-page certified letter to Farnham in which he complained that Farnham had not given him a 'written determination' regarding the rotation schedule issue and requested that Farnham disqualify himself from further review of this issue.

39. On December 15, 1997, Human Resources notified Gaines that it had investigated his complaint about the rotation schedule and determined that no violation of Company policy had occurred.

40. On December 17, 1997, Gaines sent a nine-page certified letter to Project Director David Sherman in which he requested that Sherman review the rotation schedule issue and release a 'written determination.'

41. On February 23, 1998, Gaines sent a seven-page certified letter to Suever in which he requested the name of the managing partner so that he could appeal his complaint to another level of management.

42. On March 6, 1998, Gaines met with Sherman, Suever, and Russell to discuss his complaints about the rotation schedule and Mr. Rakaska.

43. During that meeting, Sherman (1) gave Gaines the name of the managing partner, (2) told Gaines that he did not belief that any of the conduct about which Gaines had complained violated WREP policies, and (3) directed Gaines not to send any more letters.

44. WREP did not give Gaines another written determination because Sherman's decision was consistent with its December 12, and 14, 1997 letter to him.

45. During that meeting, Gaines claims that he admitted it was his belief tnat WREP was discriminating against him.

46. In June 1998, several WREP employees used the e-mail system to send a 'chain letter.' None of the employees who sent the letter had a similar record of individual e-mail counselings and warnings as Gaines; thus, WREP did not impose the same email restrictions on them as had been done with him.

B. Conslusions of Law

Based on the foregoing findings of fact the court now makes the following conclusions of law:

1. This court has jurisdiction over both the subject matter of the action and the parties to the action. 28 U.S.C. Sec. 1331(a) and Sec. 1343(a). As noted, Gaines' claims are asserted pursuant to Title Title VII and ADEA.*

2. Title VII of the Civil Rights Act of 1964 makes it an unlawful

employment practice to discriminate against an individual on the basis of race, color, religion, sex, or national origin. 42 U.S.C. Sec. 2000e-2(a). The ADEA makes it 'unlawful for an employer ... to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age. 29 U.S.C. Sec. 623(a). The protected class is employees forty years of age and over. Id. at Sec. 631. Gaines asserts a discrimination claim on the basis of race and age and alleges that his employer retaliated against him.

3. Before the court can consider Gaines' discrimination and retaliation claims on the merits, it must first address the defendants' contention that certain claims are barred because Gaines failed to timely file a charge of discrimination with the EEOC. In order to bring a claim of discrimination in federal court under Title VII, a plaintiff must first file a charge with the EEOC, or a local investigatory agency in Indiana, within 300 days of the act or actions at issue. 42 U.S.C. Sec. 2000e-5(e). Failure to file such a charge bars the claim. Koelsch v. Beltone Electronics Corp., 46 F.3d 705, 707 (7th Cir. 1995). It is undisputed that Gaines filed EEOC charges on April 22, 1998, August 3, 1998, October 6, 1998, and December 7, 1998. Accordingly, any claims which accured prior to June 26, 1997, (300 days prior to the April 22, 1998, charge) are not actionable.

*Gaines admits that he has no employment contract with WREP. As such, his claim under 42 U.S.C. fails as a matter of law. See Gonzales v. Ingersoll Milling Mach., 133 F.3d 1025, 1034-35 (7th Cir. 1998). Even if the court concluded otherwise on this point, the court's conclusion with respect to the lack of merit to Gaines' Title VII claim would doom the claim under Sec. 1981. See Johnson v. City of Fort Wayne, 91 F.3d 922, 940 (7th Cir. 1996)('Although section 1981 and Title VII differ in the types of discrimination they proscribe, the methods of proof and elements of the case are essentially identical.') (citing, inter alia, Von Zuckerstein v. Argonne Nat'l Lab., 984 F.2d 1467, 1472 (7th Cir. 1993)). A finding of lack of discrimination animus on a Title VII claim will preclude recovery on a Sec. 1981 claim. Rush v. McDonald's Corp., 966 F.2d 1104, 1119 (7th Cir. 1992).

4. The following allegation in Gaines' complaint are dismissed as time-barred:

a. WREP required Gaines to attend cross-training from October 1994 through January 1995.

b.

c. WREP offered Gaines an early retirement package in December 1994 and again in late 1995.

d. In 1994, WREP did not recognize

the birthday of Martin Luther King, Jr., as a holiday.

e. In January 1995, WREP did not give Gaines continuing education credit for previous cross-training.

f. In August 1995, and April 1997, Gaines complained about another employee's conduct but WREP found that there had been no violation of company policy; and

g. In June, 1996, WREP expressed plans to force Gaines and others to join the union.

5. The above claims are also not alleged in any of Gaines' EEOC charges. Generally speaking, a plaintiff may not bring Title VII claims in federal court which were not included in his EEOC charge, unless they are 'like or reasonably related to the allegations of the charge and growing out of such allegations.' McKenzie v. Illinois Department of Transportation, 92 F.3d 473, 481 (7th Cir. 1996(citations and internal quotation omitted).

6. The following claims are not alleged in Gaines' EEOC charges and are dismissed for failure to exhaust administrative remedies:

a. On June 27, 1997 WREP allowed an employee in the Safety Office to assign Gaines a research project without pay.

b. George Russell transmitted

false or distorted or information about Gaines in a July 2, 1997, e-mail concerning a trip to Cleveland, Ohio, and Operations Management would not talk to Gaines about the trip but did talk to other Operations Specialists.

c. When Gaines submitted a request for vaction the week of December 7, 1998, he was initially told that it might not be approved because another (white) employee's seven week vacation, which included that week, had already been approved. Gaines' vacation was approved after the white employee agreed to allow Gaines to take the week off.

7. The remaining claims that WREP discriminated against Gaines on the basis of race and/or age are as follows:

a. WREP issued a letter of reprimand on or about July 15, 1997, to Gaines for sending an e-mail to numerous employees;

b. WREP treated him unfairly in deciding to rotate duty assignments on a bi-weekly basis instead of a weekly basis;

c. WREP gave him a negative performance evaluation;

d. WREP transferred Gaines to a different shift;

e. WREP required Gaines to attend cultural diversity training;

f. Human Resources Manager Suever did not let him see a document which she

removed from his personnel file when he went to review his file;

g. WREP allowed both past and current supervisors to conduct Gaines' performance evaluation in February 1998; and

h. Gaines was not nominated for a 'We Make A Difference' award.

8. A plaintiff may prove discrimination either presenting direct evidence or by relying on the indirect, 'burden-shifting' method of proof outlined in McDonnel Douglas Corp. v. Green, 411 U.S. 792 (1973), Texas Depart. of Community Affairs v. Burdine, 450 U.S. 248 (1981), and St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

9. Direct evidence is evidence which, if believed by the trier of fact, will prove the particular fact in question without reliance upon inference or presumption. Plair v. E.J. Brach & Sons, Inc., 105 F.3d 343, 347 (7th Cir. 1997). Because Gaines presents no direct evidence of discrimination, the court analyzes his claims using the McDonnel-Douglas burden-shifting method.

10. In order to survive summary judgment, a plaintiff must first prove a prima facie case of discrimination. Bratton v. Roadway Package System, Inc., 77 F.3d 168, 175 (7th Cir. 1996); Gilty v. Village of Oak Park, 919 F.2d 1247, 1250 (7th Cir. 1990). A prima facie case of discrimination on the basis of race or age requires a plaintiff to prove that (1) he was within a protected

class; (2) his performance met his employer's legitimate expectations; (3) he was subjected to some adverse employment action; and (4) others not in his protected class received more favorable treatment. Vanasco v. National-Louis Univ., 137 F.3d 962, 965 (7th Cir. 1998); Equal Employment Opportunity Com'n v. Our Lady of the Resurrection Med. Center, 77 F.3d 145, 148 (7th Cir. 1966); Bratton, 77 F.3d at 176; Lenoir v. Roll Coater, Inc., 13 F.3d 1130, 1132 (7th Cir. 1994). The defendants contend that Gaines cannot establish the third or fourth elements of his prima facie case.

11. An alleged adverse employment action must be 'material.' Rabinovitz v. Pena, 89 F.3d 482, 488 (7th Cir. 1996). A 'materially adverse change in the terms and conditions of employment must be more disruptive than a mere inconvenience or an alteration of job responsibilities. A materially adverse change might be indicated by termination of employment, a demotion evidence by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation.' Id. (quoting Crady v. Liberty Nat'l Bank & Trust Co., 993 F.2d 132, 136 (7th Cir. 1993). '(N)ot everything that makes an employee unhappy is an actionable adverse action.' Smart v. Ball State University, 89 F.3d 437, 441 (7th Cir. 1996)(citing cases holding that change in title alone, humiliation in having to choose between transfer or

retirement, lateral transfer, or negative performance evaluations were not 'adverse').

12. With respect to the claims outlined in paragraph 7 of Part II.B. of this Entry, Gaines has not come forward with any evidence that he was subjected to an adverse employment. Even taking all of these allegations as true, none, including the rotation of duty assignment, negative performance evalution, shift transfer, and required training, rise to the level of a material adverse employment action. Therefore, Gaines cannot establish his prima facie case and the defendants are entitled to summary judgment as to those claims. Accordingly, the court need not address the defendants' further contention that Gaines also failed to produce evidence that similarly situated employees not in his protected classes received more favorable treatment.

13. Gaines alleges that the following actions were taken in retaliation for his complaints of unfair treatment:

a. Gaines was not rotated between the Belmont and Southport facilities;

b. On at least one occasion in March 1998, Gaines was not allowed to take a lunch break;

c. Gaines was required to discuss any work-related problems first verbally with his supervisor rather than through e-mail;

d. Gaines was not given credit in the company newsletter for providing student intern training;

e. Gaines was denied raw pump training in November 1998 at the South-port facility; and

f. Management failed to respond to a typed letter that Gaines presented concerning problems he was having with an unidentified person having access to his e-mail.

14. To establish a prima facie case of retaliation, Gaines must show that (1) he engaged in statutorily protected expression, i.e. reporting or otherwise opposing conducted prohibited by Title VII, (2) he suffered an adverse employ-ment action, and (3) there is a causal link between his protected expression and the adverse employment action. Paf-ford v. Herman, 148 F.3d 658, 670 (7th Cir.), cert. denied, 119 S. Ct. 548 (1998). Again, because Gaines has not offered any direct evidence of retaliation, the court will apply the McDonnel Douglas burden-shifting formu-la, wherein he must first establish a prima facie case, and if he does the employer must then offer a legitimate nondiscriminatory reason for its ac-tions, after which the burden shifts back to the plaintiff to show that the employer's explanation is merely a pre-text for retaliation. Id.

15. Here again, Gaines' claims of retaliation must fail because he has not established a prima facie case. None of

the alleged acts of retaliation constitute adverse employment actions. Gaines'dissatisfaction with his employer's decisions notwithstanding, the incidents alleged have not resulted in any actions remotely resembling the severity of discharge, demotion, or a material loss of benefits as required under the anti-discrimination statues. Summary judgment shall be granted in favor of the defendants on Gaines' retaliaton claims.

16. At least in terms of Gaines' argument in this action, if not the facts, Gaines complains of a hostile work environment:

a. To create a hostile work environment, 'the conduct at issue must 'ha(ve) the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.' Saxton v. American Tel. & Tel. Co., 10 F.3d 526, 533 (7th Cir. 1993)(quoting Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57, 65 (1986)). Title VII affords employees protection 'against conduct which is sufficiently severe or pervasive that a reasonable person would find it hostile and which the victim himself subjectively sees as abusive.' Ngeunjuntr v. Metro. Life Ins. Co., 146 F.3d 464, 467 (7th Cir. 1998)(citation omitted.)

b. 'Title VII does not prohibit all verbal or physical harassment in the workplace; it is directed only at 'discriminat(ion) ... because of sex (or race).' Oncale v. Sundowner Offshore

Services, Inc., 523 U.S. 75, 80 (1998)(emphasis added). Gaines' broad brush defeats his claim. He does not argue, nor has he presented any evidence, that he has suffered any 'harassment' because of race. Rather, he contents that a large number of employees have left the company over a four year period because the overall conditions of employment are onerous, and is doing so he presents no distinction whatsoever as to the employees' race.

c. Discriminatory harassment, to be actionable, must be so 'severe or pervasive' as to 'alter the conditions of (the victim's) employment and create an abusive working environment.' Faragher v. City of Boca Raton, 118 S. Ct. 2275, 2283 (1998)(quoting Meritor Saving Bank v. Vinson, 477 U.S. 57, 67 (1986)(quoting Henson v. City of Dundee, 682 F.2d 897, 904 (11th Cir. 1982)). Such a work environment must be both objectively and subjectively offensive, one that a reasonable person would find hostile or abusive, and one that the victim in fact did perceive to be so. Harris v. Forklift Systems, Inc., 510 U.S. 17, 21-22 (1993). Courts look at all the circumstances to determine whether an environment is sufficiently hostile or abusive, including 'the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.' Id. at 23. '(R)elatively isolated instances of nonsevere misconduct will not support claim of a hostile environment.'

Ngeunjuntr v. Metropolitan Life Ins. Co., 146 F.3d 464, 467 (7th Cir. 1998)(quoting Saxton v. American Tel. & Tel. Co., 10 F.3d 526 (7th Cir. 1993)). Similarly, with regard to offensive comments, 'isolated an innocuous incidents will not support a hostile environment claim.' Id. (quoting Drake v. Minnesota Mining & Mfg. Co., 134 F.3d 878, 885 (7th Cir. 1998)(quotation omitted)). Actionable harassment occurs when the workplace is 'permeated with discriminatory intimidation, ridicule, and insult.' Harris, 510 U.S. at 21 (internal quotation marks and citations omitted.). Judged on the foregoing standards, Gaines has not been the victim of a hostile working environment based on either his race or age, and consequently the conditions of his employment, at least as Gaines chronicles them.

III. Conclusion

'Employers may act for many reasons, good and bad; they may err in evaluating employees' strengths; unless they act for a forbidden reason, these errors (more property differences in assessment) do not matter.' Kuhn v. Ball State Univ., 78 F.3d 330, 332 (7th Cir. 1996). 'Without a prima facie case, the plaintiff cannot withstand summry judgment.' Hong v. Children's Memorial Hosp., 993 F.2d 1257, 1261 (7th Cir. 1993)(citing Gilty v. Village of Oak Park, 919 F.2d 1247, 1250 (7th Cir. 1990)). In this case, the evidentiary record shows the absense of any material adverse employment action taken against

Gaines. There is also no evidence that Gaines was treated differently based on his protected status, either with respect to his race or his age, and claim of a hostile working environment is a rhetorical claim only.

Accordingly, the defendants' motion for summary judgment must be granted.

The defendants' motion for sanctions, filed on May 22, 2000, is denied.

Judgment consistent with this Entry shall now issue. The costs of this action are assessed against the plaintiff, Louis F. Gaines.

IT IS SO ORDERED.

s/ LARRY J. McKINNEY, Judge
United States District Court

Date: September 29, 2000.

PART THREE

Seventh Court's Order of May 17, 2001

UNITED STATES COURT Of APPEALS

For the Seventh Circuit
Chicago, Illinois

May 17, 2001

Before

Hon. Frank H. Easterbrook, Cir.Judge

Hon. Daniel A. Manion, Cir. Judge

Hon. Diane P. Wood, Cir. Judge

No. 00-3802

LOUIS F. GAINES, Plaintiff -Appellant v. WHITE RIVER ENVIRONMENTAL PARTNERSHIP, Et. Al., Defendants-Appellee.	Appeals from the United States District Court for the Southern District of Indiana, Indianapolis Division No. 98-1741-C-M/S Larry J. McKinney, Chief Judge

ORDER

Our order of March 23, 2001 affirmed the district court's grant of summary judgment to the defendants in Gaines's employment discrimination suit. Because Gaines's claims were frivolous and his litigation strategy was marked by the

filing of numberous motions and appeals containing spurious allegations of impropriety by Judge McKinney and defense counsel, we directed Gaines to show cause why sanctions should not be imposed under Fedeal Rule of Appellate Procedure 38. Gaines has filed his response, and the matter is ready for decision.

Rather than present a reason not to sanction him, Gaines's response demonstrates that he wishes to continue to his frivolous litigation strategy. In his response, Gaines reiterates his belief that the defendants have violated his rights, asserts that all of his filings were necessary to defend his rights, and suggests that we should sanction the defendants rather than him. Furthermore, three days after he filed his response Gaines filed a petition for rehearing of his appeal, once again raising the same frivolous claims of discrimination.

Gaines is hereby sanctioned $1,000 for filing a frivolous appeal. Gaines shall tender a check payable to the Clerk, United States Court of Appeals, in the amount of $1,000 by May 30, 2001. Furthermore, we DENY his petition for rehearing.

PART FOUR

United States Constitution And Other Authority Or Law

1. UNITED STATES CONSTITUTION:

a. Article VI, (2): , ... shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, ...

b. Fifth Amendment: ..., nor deprived of life, liberty, or property, without due process of law;

c. Eighth Amendment: ..., nor excessive fines imposed; nor cruel and unusual punishment inflicted.

d. Thirteenth Amendment, Section I: Neither slavery nor involuntary servitude, ..., shall exist within the United States, or any place subject to their jurisdiction.

2. TITLE 28, U.S.C.:

a. Section 134(a): The district judge shall hold office during good conduct.

b. Section 144: Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

c. Section 453: ... "I, ... do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor

and to the rich, and that I will faithfully and impartially discharge and perform all duties incumbent upon me as ... under the Constitution and laws of the United States. So help me God.

d. Section 455(a): Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

e. Section 455(b): He shall also disqualify himself in the following circumstances: (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

3. TITLE 29, U.S.C.:

a. Section 623(a): It shall be unlawful for an employer - (1) ... or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual's age; (2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; (3) to reduce the wage rate of any employee in order to comply with this chapter.

b. Section 623(c): It shall be unlawful for a labor organization - (3) to cause or attempt to cause an employer to discriminate against an individual in

violation of this section.

c. Section 623(d): It shall be unlawful for an employer to discriminate against any of his employees ..., because such individual ... has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this chapter.

4. TITLE 42, U.S.C.:

a. Section 1981(a): All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

b. Section 1981(c): The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

c. Section 1983: Every person who, under color of any statue, ordinance, regulation, custom, or usage, of any State ..., subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or

other proper proceeding for redress.

d. Section 2000e-2(a): It shall be an unlawful employment practice for an employer - (1) ..., to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees ... in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such invididual's race, color, religion, sex, or national origin.

e. Section 2000e-2(k)(1)(A): An unlawful employment practice based on disparate impact is established under this subchapter only if - (i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin, and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or (ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

f. Section 2000e-2(k)(c)(2): A demonstration that an employment practice is required by business necessity may

not be used as a defense against a claim of intentional discrimination under this subchapter.

g. Section 2000e-2(m): Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

h. Section 2000e-3(a): It shall be an unlawful employment practice for an employer to discriminate against any of his employees ..., because he has opposed any practice made an unlawful employment by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

5. FEDERAL RULES OF CIVIL PROCEDURE:

a. Rule 1: ... They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

b. Rule 9(b): ... In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. (g) When items of special damage are claimed, they shall be specifically stated.

c. Rule 15(a): ...; and leave shall be freely given when justice so requires.

d. Rule 26(b)(1): Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action .... The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

e. Rule 26(g)(1): Every disclosure ... shall be signed by at least one attorney of record.... The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

f. Rule 33(b)(1): Each interrogatory shall be answered separately and fully in writing under oath, ...

g. Rule 33(b)(2): The answers are to be signed by the person making them, and the objections signed by the attorney making them.

h. Rule 34(a): Any party may serve on any other party a request (1) to produce and permit the party making the request, ..., to inspect and copy, any designated documents ... from which information can be obtained, ...

i. Rule 36(a): A party may serve upon any other party a written request for the admission, ..., including the genuiness of any documents described in the request. ... An answering party party may not give lack of information

or knowledge as a reason for a failure to admit or deny unless the party states that the party has made reasonably inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny.

j. Rule 37(a)(2): If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions.

k. Rule 37(a)(3): For the purpose of this subdivision an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or respond.

l. Rule 37(b)(1) If a deponent fails to to be sworn or to answer a question after being directed to do so by the court in the district in which the deposition is being taken, the failure may be considered a contempt of that court.

m. Rule 52(a): ... Finding of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, ...

n. Rule 54(c) A judgment by default shall not be different in kind from or exceed in amount that prayer for in the demand for judgment.

o. Rule 54(d)(1): ..., costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs;

p. Rule 55(b)(2): In all other cases the party entitled to a judgment by default shall apply to the court therefor;

q. Rule 56(c): ... The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

r. 56(g): Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith ... the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavit caused the other party to incur, including reasonably attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

s. Rule 60(b): On motion and upon such terms as a just, the court may relieve a party ... from a final judgment, order, or proceeding for the following reasons: (1) mistake; ... (3) fraud ...; (6) any other reason justifying relief from the operation of the judgment.

t. Rule 65(a): (1) No preliminary injunction shall be issued without notice to the adverse party.

u. Rule 65(b): ... A temporary

restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irereparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, ...

v. 65(c) No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, ... No such security shall be required of the United States or an officer or agency thereof.

Rule 83(a)(2): A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

6. FEDERAL RULES OF EVIDENCE:

a. Rule 106: When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

b. Rule 406: Evidence of habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or

organization on a particular occasion was in conformity with the habit or routine practice.

c. Rule 1101(a): These rules apply to the United States courts. ... The terms 'judge' and 'court' in these rules include ... United States magistrate judges.

d. Rule 1101(c): The rule with respect to privileges applies at all states of all actions, cases, and proceedings.

7. RULES Of The SUPREME COURT:

a. Rule 8: ..., the Court may take any disciplinary action against any attorney who is admitted to practice before it for conduct unbecoming a member of the Bar or for failure to comply with these Rules or any Rule or order of the Court.

b. Rule 10: ... a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

8. RULES Of APPELLATE PROCEDURE:

a. Rule 10: The record of appeal consists of the original papers and exhibits filed with the district court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the district court.

b. Rule 21: A party petitioning for a writ of mandamus ... shall also provide a copy to the trial judge.

c. Rule 27: ... an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties.

d. Rule 38: If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

e. Rule 46(a): ..., I ... do solemnly swear (or affirm) that I will demean myself as an attorney and counselor of this court, uprightly and according to law; and that I will support the Constitution of the United States.

f. Rules 46(b): A court of appeals may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action against any attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with these rules or any rule of the court.

9. S.D. IND. LOCAL RULES:

a. Rule 6.1: ... In the event the opposing counsel objects to the request for extension, the party seeking the same shall file with the Clerk a motion

for such extension and shall recite in the motion the effort to obtain agreement.

b. Rule 15.1: A party who moves to amend a pleading shall attach the original of the amendment, and one copy, to the motion.

c. Rule 26.2(a): ..., and depositions need not be filed with the court. The party responsible for service of the discovery material shall retain the original and become the custodian.

d. Rule 56.1: ... the moving party shall file proposed findings of undisputed fact and conclusions of law, and a proposed summary judgment. Any party opposing the motion shall, within fifteen (15) days from the date such motion is served upon it, serve and file any affidavits or other documentary material controverting the movant's position, together with an answer brief that shall include in its text or appendix thereto a 'Statement of Genuine Issues' setting forth, with appropriate citations to discovery responses, affidavtis, depositions, or other admissible evidence, all material facts as to which it is contended there exists a genuine issue necessary to be litigated.

PART FIVE

Petitioner's Irreparable Injury

AMERICAN HEALTH NETWORK
of Indiana, Inc.
FED ID #35-1930805

Billing Department
3400 Lafayett Road
Indianapolis, IN 46222
317--293-4113

Date: June 3, 1999

Time: 1.15

Patient:

Louis F. Gaines
5337 North College Avenue
Indianapolis, IN 46220-3141

Reason: Neck Stiffness

Doctor: DeSilvester, MD, #204.

N W R

Northwest Radiology Network
Federal I.D. Number 35-1158723
Since 1967

106 N. Meridian Street
Indianapolis, IN 46278
317--328-5050

DOS: 6-3-99

Patient:

Louis F. Gaine
5337 N. College Ave
Indianapolis, IN
317--283-4821

REFERRING DOC: BAA GEORGE DESILVESTER

REASON FOR VISIT: CERVICALGIA

AMERICAN HEALTH NETWORK
of Indiana, Inc.
FED ID #35-1930805

Billing Department
3400 Lafayett Road
Indianapolis, IN 46222
317--293-4113

Date: August 4, 1999

Time: 1.0

Patient:

Louis F. Gaines
5337 North College Avenue
Indianapolis, IN 46220-3141

Reason: EAR PROB/CAN'T HRAINS

Doctor: DeSilvester, MD #204.

NORTHSIDE ENT, INC.

8803 N. Meridian Street
Indianapolis, IN 46260
317--844-5656

Tax ID #35-1462253

ROBERT W. STEPHENS, M.D. F.A.C.S.
JACK V. GOSSETT, M.D. F.A.C.S.
VICKI K. SHELTON, M.D. F.A.C.S.
SCOTT A. HACKETT, M.D. F.A.C.S.

DATE: August 12, 1999

TIME: 10.00

PATIENT:

Louis F. Gaines
5337 North College Avenue
Indianapolis, IN 46220
317--283-4821

REASON: Tinnitus

REFERRING DR.: DeSilvester, MD

DOCTOR: Hackett, MD

DIAGNOSIS:

External Ear: Impacted Wax

NORTHSIDE ENT, INC.

8803 N. Meridian Street
Indianapolis, IN 46206
317--844-5656

Tax ID #35-1462253

ROBERT W. STEPHENS, M.D. F.A.C.S.
JACK V. GOSSETT, M.D. F.A.C.S.
VICKI K. SHELTON, M.D. F.A.C.S.
SCOTT A. HACKETT, M.D. F.A.C.S.

DATE: October 14, 1999

TIME: 10.00

PATIENT:

Louis F. Gaines
5337 North College Avenue
Indianapolis, IN 46220
317--283-4821

REASON: Ear Pain/Ringing

REFERRING DR.: DeSilvester, MD

DOCTOR: Hackett, MD

DIAGNOSIS:

Inner Ear:	Sensorineural Hearing Loss
Inner Ear:	Tinnitis, Subjective